

## **Appendix A**

**[REDACTED – FOR PUBLIC  
INSPECTION]**

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

In the Matter of

Emergency Petition of Level 3  
Communications, LLC, for the Assignment  
of Additional Telephone Numbers in Area  
Code 603, and for Preemption of the  
Actions of the New Hampshire Public  
Utilities Commission Pursuant to Section  
253 of the Communications Act of 1934

WCB Docket No. \_\_\_\_\_

**Emergency Petition of Level 3 Communications, LLC.**

William P. Hunt III  
Michael P. Donahue  
Greg L. Rogers  
LEVEL 3 COMMUNICATIONS, LLC  
1025 Eldorado Boulevard  
Broomfield, Colorado 80021  
(720) 888-2516

John T. Nakahata  
Linda Coffin  
HARRIS, WILTSHIRE & GRANNIS LLP  
1200 Eighteenth Street, NW  
Washington, DC 20036  
(202) 730-1320

*Counsel for Level 3 Communications, LLC*

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**INTRODUCTION AND SUMMARY**

Level 3 Communications, LLC (“Level 3”), pursuant to Sections 251(e) and 253 of the Communications Act of 1934, as amended, and Sections 1.2 and 52.9 of the Commission’s rules, 47 C.F.R. §§ 1.2, 52.9, requests that the Commission direct the North American Numbering Plan Administrator (“NANPA”) to assign Level 3 additional thousand blocks of telephone numbers in each area in which Level 3 meets the industry guidelines of 75 percent utilization and six months or less until projected exhaust, including specifically the **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** rate centers listed in Exhibit 1.<sup>1</sup> Level 3 has run out of numbers in **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** rate centers in area

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<sup>1</sup> Concurrently with this petition, Level 3 is filing a Request for Special Temporary Authorization of Thousands-Blocks in Area Code 603 (“STA Request”). The STA Request asks that the Wireline Competition Bureau direct NANPA to assign and release immediately a block of one thousand growth codes to Level 3 in each rate center where the inventory has reached 90 percent utilization and is less than three months from exhaust.

code 603<sup>2</sup> – New Hampshire’s only area code – and imminently will exhaust its supply of numbers in many more. **[\*\*BEGIN CONFIDENTIAL\*\*]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**CONFIDENTIAL\*\*]**

Level 3 has been trying to obtain additional thousand block growth codes in area code 603 since 2005, but has been continually denied. Each time, NANPA told Level 3, “[a]ccording to the New Hampshire Public Utilities Commission, [Level 3 is] not certified in the area in which [it is] requesting numbering resources.”<sup>3</sup> But this is patently false. Level 3 has held a certificate from the New Hampshire Public Utilities Commission (“PUC”) to provide local exchange service since 1998, and long ago interconnected with Verizon, the incumbent LEC in Level 3’s service areas. The PUC apparently is using a claim of lack of certification as a tool to impose a *de facto* freeze on any Level 3 numbering requests.

This is not a case of number rationing in the face of area code jeopardy. There is no imminent shortage of numbers in New Hampshire – with over 3.2 million numbers available and no exhaust predicted before 2011. Indeed, Level 3 has contributed to that

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<sup>2</sup> See Exhibit 2, Utilization Chart.

<sup>3</sup> See, e.g., Pooling Administrator’s Response/Confirmation, dated June 3, 2008, attached as Exhibit 4. Exhibit 4 consists of one example of these responses, which is substantially the same as all other denials received by Level 3, contained on the CD attached as Exhibit 5.

number availability by donating **[\*\*BEGIN CONFIDENTIAL\*\*]** **[REDACTED]** **[\*\*END CONFIDENTIAL\*\*]** thousand block codes through the implementation of thousand block pooling.

Level 3 has no alternative but to seek numbers from the Commission. Without more numbers, Level 3 cannot offer service in New Hampshire. Level 3 has already reclaimed numbers from some of its customers for re-use. And after NANPA denied Level 3's second set of growth code requests in April to August 2007, Level 3 filed an appeal and safety valve request for number assignment with the PUC on September 12, 2007—on which the PUC has taken no action in over ten months.<sup>4</sup>

There is no legal basis for the PUC's continual instruction to NANPA that Level 3 is not certified as a LEC in the rate centers for which it seeks numbers. Level 3's competitive local exchange carrier ("CLEC") certificate in New Hampshire has never been revoked. While the PUC has issued orders that purport to ban the use of numbers for ISP-bound CLEC foreign exchange-like services, those orders never took effect, and thus are not at issue here.<sup>5</sup> And while New Hampshire has had an open proceeding since

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<sup>4</sup> See *Level 3 Communications, LLC's Appeal of the North American Numbering Plan Administration's Denial of Numbering Resources*, DT 07-099 (filed Sept. 12, 2007) (Exhibit 6, attached).

<sup>5</sup> See Order No. 24,080, *Final Order*, 87 NH PUC 749 (2002); Order No. 24,116, *Order Staying Effectiveness of Order 24,080 and Addressing Motions for Rehearing and Clarification*, 88 NH PUC 12 (2003); Order No. 24,218, *Order Clarifying and Granting Limited Rehearing of Order No. 24,080*, 88 NH PUC 462 (2003); Order No. 24,419, *Order Approving Agreements in DT 00-223 and DT 00-054*, 89 NH PUC 727 (2004); Order No. 24,466, *Order Denying Motion for Rehearing of Order No. 24,419*, 90 NH PUC 195 (2005); Order No. 24,514, *Order Suspending the Procedural Schedule and Establishing a Hearing Date for Further Consideration of Internet Telephony Issues*, 90 NH PUC 390 (2005) ("Order Suspending Rules"). See also Secretarial Letter in DT 00-223 and DT 00-054 dated November 17, 2005 from Debra H. Howland, New Hampshire PUC Executive Director and Secretary, re Suspension of Implementation Schedule ("Secretarial Letter").

2000 as to how to apply its “local presence” test for numbers for non-ISP-bound CLEC FX service,<sup>6</sup> the PUC has never brought that docket to conclusion. In any event, the Commission never delegated to the PUC the authority to decide what types of uses of telephone numbers qualify for numbering resources when a CLEC is providing telephone exchange and exchange access services. To the contrary, the FCC expressly prohibited New Hampshire from “unduly favor[ing] or disfavor[ing] any particular telecommunications industry segment or group of telecommunications consumers” and from “unduly favor[ing] one telecommunications technology over another.”<sup>7</sup> Yet that appears to be precisely what the PUC is doing, especially because the PUC (or its staff) appears to believe that wholesale CLECs do not qualify for numbers because they do not bill the retail end user – a proposition at odds with the FCC’s statements and precedent.

NANPA’s and the PUC’s failure to grant Level 3’s request for growth codes violates the Commission’s numbering rules and orders, and erects an impermissible barrier to entry that violates Section 253(a) of the Act. The Commission’s rules are clear: NANPA must make numbers “available on an equitable basis,” “facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers,” “not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers,” and “not unduly favor one telecommunications

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<sup>6</sup> See *Investigation into Whether Certain Calls are Local; Staff Investigation Into Number Usage, Order of Notice*, DT 00-223 (2000), discussed in Order No. 23,595, Prehearing Conference Order (2000) (“Order No. 23,595”).

<sup>7</sup> See *New Hampshire Public Utilities Commission’s Petition for Additional Delegated Authority to Implement Number Optimization Measures in the 603 Area Code*, Order, 15 FCC Rcd 1252, 1255 ¶ 8 (1999) (“*New Hampshire Delegation Order*”).

technology over another.”<sup>8</sup> At the behest of the PUC, NANPA is violating each and every one of these rules, and denying Level 3’s customers their choice of carrier. Level 3 thus requests the Commission immediately direct NANPA to assign it additional thousand block numbers in the 603 area code in each rate center in which Level 3 meets the industry guidelines of 75% utilization and less than six months to exhaust.

### BACKGROUND

Level 3 is certified in New Hampshire as a facilities-based telecommunications carrier with an international network optimized for Internet Protocol technology. Since 1998, Level 3 has provided local exchange telecommunications services in all of the former Bell Atlantic service areas in New Hampshire.<sup>9</sup> Level 3 operates exclusively in those areas. Level 3 is interconnected with Verizon in New Hampshire, pursuant to a PUC-approved interconnection agreement.<sup>10</sup> Level 3 offers direct inward dial (“DID”) and direct outward dial (“DOD”) services that allow for local connectivity to the public switched telephone network (“PSTN”) by Level 3’s customers and their end users.

As with any other carrier interconnected with the PSTN, Level 3’s telecommunications services rely on the assignment and use of public telephone number resources as an integral part of its service offerings. However, unlike some other carriers, Level 3’s business model has historically focused on wholesale services. A large percentage of Level 3’s services, both in New Hampshire and across the country, are

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<sup>8</sup> 47 C.F.R. § 52.9(a).

<sup>9</sup> *See Level 3 Communications, LLC Petition for Authority to Provide Local Telecommunications Services*, Order NISI Granting Authorization, DC 98-133, Order No. 23,011, 83 NH PUC 461 (1998) (“Level 3 New Hampshire Certificate”) (Exhibit 7, attached).

<sup>10</sup> *See Letter from Debra A. Howland, Executive Director and Secretary, New Hampshire Public Utilities Commission, to Victor D. Del Vecchio, Senior Regulatory Counsel, Verizon New Hampshire* (Dec. 6, 2004).



provided to other carriers, interconnected VoIP providers, Internet Service Providers (“ISPs”), and enhanced service providers (“ESPs”) that use Level 3’s telecommunications services to provide their own telecommunications, interconnected VoIP and/or information services. In New Hampshire, as in 47 other states, Level 3 has requested and has been granted NXX or NXX-X codes from NANPA for its local exchange carrier operations.<sup>11</sup> Level 3’s operations and services in other states are substantially similar to its operations in New Hampshire.

The assignment of telephone numbers is an essential component of Level 3’s offerings of interconnection, connectivity to the PSTN and 911 services to its wholesaler customers, as well as to enterprise users. Level 3’s interconnected VoIP, ISP, ESP and enterprise customers pay Level 3 for services that include the use of telephone numbers, just as other consumers of local telephone service do. When telephone numbers are provided with services that are sold to interconnected VoIP, ISP, ESP and enterprise customers, the service is working and available and the numbers can be used by its customers at any time.

In New Hampshire, Level 3 faces a critical shortage of telephone numbers that directly affects its ability to provision these services to its customers. In **[\*\*BEGIN CONFIDENTIAL\*\*]** **[REDACTED]** **[\*\*END CONFIDENTIAL\*\*]** rate centers, Level 3 has 10 or fewer telephone numbers remaining per thousand block and utilization is over 99 percent, with several at complete exhaust.<sup>12</sup> There are **[\*\*BEGIN CONFIDENTIAL\*\*]** **[REDACTED]**

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<sup>11</sup> Level 3 does not utilize its own numbering resources to offer its local exchange services in Alaska, Hawaii and Maine.

<sup>12</sup> See Exhibit 2, Utilization Chart. In **[\*\*BEGIN CONFIDENTIAL\*\*]** **[REDACTED]** **[\*\*END CONFIDENTIAL\*\*]** of these rate centers, Level 3 is assigned only a single thousand block.

**[\*\*END CONFIDENTIAL\*\*]** rate centers that have more than 90 percent utilization.<sup>13</sup>

As of July 7, 2008, Level 3's telephone number utilization exceeds 75 percent in

**[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** New Hampshire rate centers, and in each of these rate centers, Level 3 projects exhaust in less than six months.<sup>14</sup>

Nonetheless, Level 3 has been unable to obtain additional numbers for New Hampshire rate centers since 2005, when PUC staff essentially froze Level 3's access to additional NXX growth codes by telling NANPA that Level 3 was not certified in any area where it was seeking codes.<sup>15</sup> In 2005, New Hampshire was implementing new state rules regarding the use of numbers for CLEC foreign exchange services, particularly for dial-up ISP traffic, and for non-ISP-bound traffic when a CLEC does not have customers physically located within a particular rate center.<sup>16</sup> Since that time, several changes have occurred. First, New Hampshire stayed the effective date of its rules for CLEC foreign exchange services, so that those rules have never taken effect.<sup>17</sup> Second, Level 3 began offering wholesale interconnected VoIP services. Accordingly, Level 3 is providing service for end users physically located in all of the rate centers in New Hampshire in

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<sup>13</sup> See Exhibit 2.

<sup>14</sup> See Exhibit 2. Level 3 has to date only applied for growth codes in **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** of these **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** rate centers.

<sup>15</sup> See, e.g., Exhibit 4.

<sup>16</sup> *Investigation As to Whether Certain Calls are Local*, DT 00-223; *Independent Telephone Companies and Competitive Local Exchange Carriers—Local Calling Areas*, DT 00-054, Order No. 24,080, *Final Order*, 87 NH PUC 749, 767 (2002) (“Going forward, a CLEC may offer FX-like service for non-ISP bound traffic only when it is providing service to at least one customer physically located in the exchange from which the FX service is requested. For this purpose, the CLEC must be providing local dial tone via its own facilities, over an EEL arrangement or by using UNE loops.”).

<sup>17</sup> See Order Suspending Rules and Secretarial Letter.

which it holds numbering resources. Third, the PUC audited Level 3's use of numbering resources. No adverse conclusions or findings were ever issued as a result of that audit. Fourth, although there is no near-term number shortage in New Hampshire,<sup>18</sup> Level 3 reclaimed a substantial amount of numbers from its wholesale customers and reassigned them to fill other service orders, using Level 3's inventory even more efficiently.<sup>19</sup> Furthermore, through the implementation of thousand block number pooling, Level 3 has donated **[\*\*BEGIN CONFIDENTIAL\*\*]** **[REDACTED]** **[\*\*END CONFIDENTIAL\*\*]** thousand blocks of numbers (i.e. **[\*\*BEGIN CONFIDENTIAL\*\*]** **[REDACTED]** **[\*\*END CONFIDENTIAL\*\*]** numbers) to the pool from what had been Level 3's initial NXX allocations.<sup>20</sup>

Notwithstanding its reclamation efforts, Level 3's customers continue to need more numbers as demand for services grows. Indeed, since 2005, Level 3 has denied service to approximately **[\*\*BEGIN CONFIDENTIAL\*\*]** **[REDACTED]** **[\*\*END CONFIDENTIAL\*\*]** requesting about **[\*\*BEGIN CONFIDENTIAL\*\*]**

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<sup>18</sup> The latest Commission report shows 47.8 percent of numbers – over 3.2 million numbers – are still available in area code 603. *See* Numbering Resource Utilization in the United States, March 2008 at Table 6 (available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-280978A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280978A1.pdf)). The current NANPA exhaust forecast for the 603 area code is the first quarter of 2011, and that forecast has been extended into the future every year since 2004. *See* April 2008 NANP Exhaust Analysis, at 3 (available at [http://www.nanpa.com/pdf/NRUF/April\\_2008\\_NANP\\_Exhaust\\_Analysis.pdf](http://www.nanpa.com/pdf/NRUF/April_2008_NANP_Exhaust_Analysis.pdf)).

<sup>19</sup> *See* Declaration of Shaun Giesler, Exhibit 3, attached (“Giesler Declaration”). In addition to reclamation, Level 3 has taken other actions to actively manage its numbering resources efficiently. Level 3 has adopted an internal customer telephone number policy. The policy includes a “limit-per-rate-center rule,” whereby any request for 200 or more numbers is reviewed carefully to determine whether the order should be filled or denied. As part of its policy, Level 3 also adopted internal reclamation procedures, and requirements that Level 3's customers take an active role in efficiently managing the telephone numbers they obtain from Level 3.

<sup>20</sup> *See* Giesler Declaration ¶ 10.

██████████ **[\*\*END CONFIDENTIAL\*\*]** New Hampshire numbers because of its lack of access to growth number resources.<sup>21</sup> **[\*\*BEGIN CONFIDENTIAL\*\*]** ██████████

To address this problem, between April and August 2007, Level 3 again applied to NANPA for a growth assignment of thousand block codes for use in **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** New Hampshire rate centers – all of which have implemented thousand-block pooling.<sup>23</sup> NANPA denied Level 3’s growth requests again on the grounds that Level 3 is “not certified in the area in which [it is] requesting numbering resources.”<sup>24</sup>

This rationale was clearly erroneous at best and pure pretext at worst. As noted above, Level 3 holds a CLEC authorization for all of the former Bell Atlantic service areas across the state of New Hampshire, and the phone numbers were for use in providing Level 3's wholesale CLEC services in those areas.<sup>25</sup> Pursuant to the

<sup>21</sup> See Giesler Declaration ¶ 12.

<sup>22</sup> See Giesler Declaration ¶ 4.

<sup>23</sup> See Exhibit 5. Level 3's 2007 applications included ten rate centers that no longer exceed 75% utilization. Level 3 is not immediately seeking growth codes for those ten rate centers, which are **\*\*BEGIN CONFIDENTIAL\*\*** [REDACTED]

██████████ **[\*\*END CONFIDENTIAL\*\*]**. Those rate centers have not been included in Exhibit 1.

<sup>24</sup> See, e.g., Exhibit 4.

<sup>25</sup> See Level 3 New Hampshire Certificate, Exhibit 7. According to the NANPA website, a commission order specifying the service area is sufficient evidence of state certification. See List of State Certifications, available at [http://www.nanpa.com/pdf/State\\_Certifications\\_updated\\_112907.pdf](http://www.nanpa.com/pdf/State_Certifications_updated_112907.pdf).

Commission's *First Numbering Order* and under the "Safety Valve Process" set forth in the ATIS Standards NXX Assignment Guidelines,<sup>26</sup> Level 3 appealed NANPA's denial to the PUC in September 2007.<sup>27</sup> According to estimates made available by NANPA concerning state PUC Safety Valve procedures, the New Hampshire PUC typically needs only 20 days to make a decision.<sup>28</sup> Instead, this appeal has been pending for *more than ten months*. In fact, the PUC has not even issued an Order of Notice in the docket, which it typically does shortly after receiving such a request. The only activity in the docket has been a November 19, 2007 request for additional information from PUC staff, a December 5, 2007 response from Level 3, a February 13, 2008 meeting between Level 3 representatives and staff, a March 20, 2008 Memorandum from staff to the PUC Commissioners, and an April 8, 2008 response from Level 3 to the staff memorandum. The PUC has not scheduled any action on Level 3's appeal, and has not provided any indication of when, if ever, it intends to act. During this period of inaction by the PUC, Level 3's number shortage grows increasingly severe as it is unable to meet demand for its services throughout the state.<sup>29</sup>

Most recently, on May 29, 2008, Level 3 once again applied to NANPA requesting growth codes, this time for **[\*\*BEGIN CONFIDENTIAL\*\*]** **[REDACTED]** **[\*\*END CONFIDENTIAL\*\*]** rate centers, some of which duplicated its 2007 requests and some

<sup>26</sup> See *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, 7615 ¶ 98 (2000) ("*First Numbering Order*"); see also Central Office Code (NXX) Assignment Guidelines (COCAG) Final Document, ATIS Standard (Jan. 18, 2008) (available at [www.atis.org/INC/incguides.asp](http://www.atis.org/INC/incguides.asp)) ("*ATIS Guidelines*").

<sup>27</sup> See Exhibit 6.

<sup>28</sup> See Safety Valve Process – "Quick Sheet," available at [http://www.nanpa.com/pdf/Summary\\_Quick\\_Sheet\\_for\\_SV\\_IMG\\_022708\\_FINAL.pdf](http://www.nanpa.com/pdf/Summary_Quick_Sheet_for_SV_IMG_022708_FINAL.pdf).

<sup>29</sup> See Giesler Declaration.

of which were in addition to the 2007 requests.<sup>30</sup> Again, all these requests were for rate centers that had implemented thousand-block pooling. On June 3, 2008, based on direction from the PUC staff, NANPA again withheld additional numbering resources from Level 3 in all **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** rate centers.<sup>31</sup> Level 3 has not filed a further appeal and safety valve request at the PUC as doing so would be futile in light of the PUC's failure to act on Level 3's 2007 appeal and safety valve request.

The Commission has only made limited and narrow delegations of numbering administration authority to the PUC – none of which delegated plenary policymaking authority. In 1999, the Commission conditionally granted the PUC's request for additional authority to implement various area code conservation measures in New Hampshire. Specifically, the Commission delegated to the state commission authority to “reclaim unused and reserved NXX codes; set numbering allocation standards, including the establishment of a requirement that carriers demonstrate facilities readiness and the setting of fill rates; enforce and audit carrier compliance with number utilization reporting requirements; require the submission of utilization and forecast information to the New Hampshire Commission; and institute a thousands-block pooling trial.”<sup>32</sup>

When delegating this limited authority, the Commission did not abdicate its stewardship of a centralized, nationwide numbering policy. To that end, the Commission

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<sup>30</sup> Although some of these requests duplicated its 2007 requests, Level 3 has not withdrawn its 2007 requests, so that the total number of rate centers in which Level 3 has sought and been denied additional growth codes is **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]**.

<sup>31</sup> See, e.g., Exhibit 4.

<sup>32</sup> See *New Hampshire Delegation Order* ¶ 1.

made clear that the overarching goals of numbering administration must govern the PUC whenever it acts pursuant to its delegated authority: “Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources. For consumers to benefit from the competition envisioned by the Telecommunications Act of 1996, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible.”<sup>33</sup> The scope of the delegated authority was constrained by national numbering policy.

The delegation of authority was further limited because the Commission issued this limited grant of authority as an interim measure, later superseded by the national guidelines for numbering optimization set forth in the *Numbering Resource Optimization Proceeding*.<sup>34</sup> In the subsequent *Numbering Resource Optimization Order*,<sup>35</sup> the Commission reiterated the limited nature of its delegation to the states of “certain elements of numbering administration,” but again emphasized its own paramount responsibility for numbering policy, stating that “numbering resource optimization policy is part of our role as guardian of the nationwide NANP resource.”<sup>36</sup> Notably, the Commission did not delegate a policy-making role to the PUC, did not grant the PUC the authority to determine “qualifying” and “non-qualifying” local exchange and exchange

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<sup>33</sup> *New Hampshire Delegation Order* ¶ 9.

<sup>34</sup> *See New Hampshire Delegation Order* ¶ 2 (granting interim authority “subject to the caveat that this grant will be superseded by forthcoming decisions in the *Numbering Resource Optimization proceeding* that will establish national guidelines, standards, and procedures for numbering optimization”).

<sup>35</sup> *See First Numbering Order* ¶ 98.

<sup>36</sup> *See First Numbering Order* ¶ 7 and n.17 (citing the *New Hampshire Delegation Order*, among others).

access services or uses, and required it to act in accordance with national numbering principles set forth in the Commission's rules: to ensure that numbers are made available on an equitable, efficient, timely, nondiscriminatory basis, without favoring or disfavoring particular industry segments, consumers, or telecommunications technologies.<sup>37</sup>

## ARGUMENT

### **I. Assignment of Additional Thousand Blocks is Necessary to Remove the Barrier that Now Prevents Level 3 from Serving Some of its Potential Customers.**

Pursuant to the Commission's plenary authority over numbering administration,<sup>38</sup> Level 3 requests that the Commission direct NANPA to assign and release additional thousand block growth codes to Level 3 in rate centers within the 603 area code where Level 3 meets the eligibility criteria in industry guidelines. The Commission has articulated its standard for granting relief in the form of an immediate release of numbering resources in the *Pennsylvania Numbering Order*.<sup>39</sup> There, the Commission determined that "[i]f, in fact, those carriers cannot serve customers because they do not have numbers, or if they are having to use extraordinary and unreasonably costly measures to obtain numbers in order to provide service," a state commission should work

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<sup>37</sup> See 47 C.F.R. § 52.9(a).

<sup>38</sup> See 47 U.S.C. §251(e); see also 47 C.F.R. §§ 52.3, 52.15 et seq.

<sup>39</sup> See *Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, Memorandum Opinion and Order and Order on Reconsideration, 13 FCC Rcd 19009 (1998) ("Pennsylvania Numbering Order"); *In the Matter of Numbering Resource Optimization; Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, Second Report and Order, Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, 16 FCC Rcd 306, 341-43 ¶ 76-80 (2000).



with the numbering administrator to ensure that the carriers have access to codes.<sup>40</sup>

Further, if the state commission “unduly favors or disfavors a particular industry segment, or otherwise violates our guidelines for numbering administration, [carriers] may file a petition for declaratory ruling with this Commission to seek relief.”<sup>41</sup>

Subsequently, the Bureau applied the criteria set forth in the *Pennsylvania Numbering Order* and directed NANPA to assign and release numbering codes.<sup>42</sup> In each of those cases carriers had *nearly* reached the point of being unable to serve customers in some rate centers.<sup>43</sup> Level 3 is past that point.

Level 3 has no alternative but to ask the Commission to grant similar relief in this instance. As discussed above, Level 3’s appeal of NANPA’s 2007 denial and “safety valve” request for additional numbers has been pending at the PUC since September 2007. With respect to safety valve requests, industry guidelines call for “Resolution by the state commission . . . in an expeditious manner.”<sup>44</sup> That has not happened, and Level 3 is at actual exhaust in several rate centers. Industry standards governing the appeals process contemplate a petition to the Commission for relief when a state fails to act: “If a

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<sup>40</sup> See *Pennsylvania Numbering Order*, 13 FCC Rcd at 19039 ¶ 49.

<sup>41</sup> See *id.* at 19027 ¶ 26.

<sup>42</sup> See, e.g., Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, to Mr. Ronald R. Conners, Director, NANPA, DA 99-505, File No. 99-25 (March 12, 1999) (directing NANPA to release two central office codes to Sprint PCS after it demonstrated that it had “virtually exhausted all available numbers” in a rate center, that it was using “extraordinary and costly measures . . . to provide service to customers in the” NPA, and that without emergency relief, “at worst, [it] may be unable to provide service to customers” in the NPA); Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, to Mr. Ronald R. Conners, Director, NANPA, DA 99-663, NSD File No. 99-31 (April 7, 1999) (granting “extraordinary relief” and noting that if the carrier did not “obtain additional numbering resources very soon . . . they . . . , at worst, may be unable to provide service to customers in the [] NPA”).

<sup>43</sup> See *id.*

<sup>44</sup> ATIS Guidelines § 12.1(d).

state does not reach a decision on a safety valve request within a reasonable timeframe, [service providers] may submit such requests to the FCC for resolution.’<sup>45</sup>

Level 3’s request is urgent, yet simple. In April through August 2007 and May 2008, Level 3 submitted complete applications for growth codes certifying its need for such codes. The months-to-exhaust worksheets, attached at Exhibit 5, show that Level 3 has satisfied the minimum criteria for the assignment of growth codes set forth in Section 4.3 of the ATIS Guidelines and Section 52.15(g)(3)(i)(A) and (B) of the Commission’s rules.<sup>46</sup> Although the PUC staff claimed that Level 3 was not certified in the areas in which it sought numbers, Level 3’s New Hampshire certification, a copy of which is attached as Exhibit 7, shows otherwise.<sup>47</sup>

Without growth codes, Level 3 will continue to turn away customers who would otherwise choose to receive service from Level 3. Moreover, Level 3 will be irreparably harmed because it will be at a competitive disadvantage relative to other providers that have telephone numbers and are not yet facing exhaust. When Level 3 cannot meet a customer’s needs because Level 3 lacks numbers, the customer will likely turn to one of Level 3’s competitors to procure its service. Therefore, immediate relief of this nature will promote the two primary goals of the Commission’s statutory mandate to oversee the NANP and numbering issues in the United States:<sup>48</sup> that the “limited numbering resources of the NANP” are used efficiently and “to ensure that all carriers have the numbering resources they need to compete in the rapidly growing telecommunications

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<sup>45</sup> *Id.* § 12.2 (“Safety Valve Process”).

<sup>46</sup> *See* 47 C.F.R. § 52.15(g)(3)(i)(A) and (B).

<sup>47</sup> *See* Level 3 New Hampshire Certificate, at 1, Exhibit 7. Level 3’s certificate has not been revoked or suspended.

<sup>48</sup> *See* 47 U.S.C. § 251(e)(1).

marketplace.”<sup>49</sup> This relief will also serve the public interest by ensuring that customers have their choice of carrier.

Not only will the release of numbers promote the public interest and the goals of the Act, it will do so without causing any harm to the bountiful numbering resources in the State of New Hampshire. The latest Commission report shows that 47.8 percent of the numbers – approximately 3.2 million numbers – are still available in the 603 area code,<sup>50</sup> and according to NANPA forecasts, the 603 area code will not reach exhaustion until the first quarter 2011.<sup>51</sup> In addition, thousands-block number pooling measures have been adopted in all of the rate centers for which Level 3 seeks growth codes. Granting Level 3’s request for **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** thousand-blocks – representing **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** of available numbers – will not place New Hampshire in a jeopardy situation.

Accordingly, the Commission should direct NANPA to assign Level 3 an additional thousand block of numbers in each rate center listed on Exhibit 1.

## **II. NANPA’s Denial of Growth Codes and the PUC’s Instructions to NANPA to Deny Growth Codes to Level 3 Violate the Commission’s Numbering Administration Rules and Delegations.**

The PUC’s instructions to NANPA to deny additional thousands-block numbers (i.e., growth codes) to Level 3 on the grounds that Level 3 was “not certified in the area in which you are requesting numbering resources” was both patently untrue and a

<sup>49</sup> *First Numbering Order* ¶ 1.

<sup>50</sup> See Numbering Resource Utilization in the United States, March 2008 at Table 6 (available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-280978A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280978A1.pdf)).

<sup>51</sup> See April 2008 NANP Exhaust Analysis, at 3 (available at <http://www.nanpa.com/reports/index.html>).

violation of the Commission's rules and delegations regarding telephone number administration. The Commission's regulations, "to ensure that telecommunications numbers are made available on an equitable basis," require that numbering administration: "(1) facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient and timely basis to telecommunications carriers; (2) not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and (3) not unduly favor one telecommunications technology over another."<sup>52</sup> These requirements are applicable both to NANPA and to any state to which the FCC delegates any telecommunications numbering administration functions.<sup>53</sup> In performing code administration, NANPA must process applications "in a timely manner" and assign or deny "numbering resources in a consistent, neutral manner."<sup>54</sup>

These same requirements apply to states performing number administration functions under delegated authority from the Commission.<sup>55</sup> In delegating authority to the PUC to adopt and implement number conservation measures, the Commission required the PUC to abide by the same requirements imposed on NANPA: "Thus, the New Hampshire Commission, to the extent it acts under the authority delegated herein, must ensure that numbers are made available on an equitable basis; that numbering resources are made available on an efficient and timely basis; that whatever policies the New Hampshire PUC institutes with regard to numbering administration not unduly favor

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<sup>52</sup> 47 C.F.R. § 52.9(a).

<sup>53</sup> *See id.* at § 52.9(b).

<sup>54</sup> *See* NANPA, Services: Code Administration  
[http://www.nanpa.com/number\\_resource\\_info/code\\_admin.html](http://www.nanpa.com/number_resource_info/code_admin.html).

<sup>55</sup> *See* 47 C.F.R. § 52.9(a), (b).

or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and that the New Hampshire Commission not unduly favor one telecommunications technology over another.”<sup>56</sup>

Since obtaining delegated authority from the Commission, the PUC has ignored this mandate to make numbering resources available in a timely, efficient and nondiscriminatory manner while it undertakes policymaking proceedings and investigations concerning number usage related to the provision of VoIP service.<sup>57</sup> PUC staff, in a confidential memorandum, the redacted version of which is attached hereto as Exhibit 8, stated that it would take nothing short of a “policy change” to “entitle CLECs, such as Level 3, to receive numbering resources for providers of non-traditional telephone-like service.”<sup>58</sup> Apparently, the PUC has put the assignment of numbers to certain carriers on hold while it develops and considers the application of a “local nexus test” to determine whether a carrier is eligible for “virtual numbering.”<sup>59</sup> In addition, to the extent that the PUC originally decided to block further growth code assignments because of its pending implementation of a ban on numbers for CLEC foreign exchange (FX) services for ISP-bound traffic and a new arrangement called Internet Access NXX (IANXX), that implementation was suspended over two and a half years ago, and has not been reinstituted. Indeed, a staff memorandum from November 2006 states that the

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<sup>56</sup> *New Hampshire Delegation Order* ¶ 8.

<sup>57</sup> On October 6, 2000, the New Hampshire PUC opened a docket to consider several issues, including the implementation of number conservation measures. *See* Order No. 23,595.

<sup>58</sup> Memorandum from Jody O’Marra to Commissioners, New Hampshire Public Utilities Commission, at 10 (March 20, 2008) (Exhibit 8, attached).

<sup>59</sup> *See* Memorandum from Kath Mullholand, Assistant Director, Telecommunications Division to Thomas Getz et al, Investigation Into Whether Certain Calls are Local; Staff Investigation into Number Usage, DT 00-223, at 9 (Nov. 9, 2006).

implementation of IANXX and CLEC FX “was suspended while Staff conducted an investigation into the provision of VOIP service.”<sup>60</sup> As such, the PUC’s IANXX and ISP-bound CLEC FX orders provide no legal basis for denying Level 3 additional numbers, nor does the pendency of its incomplete proceeding on CLEC provision of numbers to VoIP providers. There is no legal authority in the Commission’s rules or in industry numbering guidelines for denying number assignment simply because the PUC has pending proceedings.

Worse, these policymaking proceedings go far beyond the bounds of the PUC’s delegated authority and infringe on the Commission’s jurisdiction and role of establishing a uniform national numbering policy – and, particularly for service to VoIP providers, conflict with the FCC’s own pronouncements. The Commission has never delegated its powers to set numbering policy, and has not delegated to the PUC the power to decide which telecommunications or information services can receive numbers, and which cannot. Under these delegations, it is not for the PUC or its staff to decide, for example, that interconnected VoIP providers cannot obtain access to numbering resources as part of the interconnection and other telecommunications services they procure from CLECs such as Level 3. Indeed, as discussed further in Section III, below, the Commission has already made clear that CLECs may provide numbers to non-carrier service providers, such as VoIP providers.

The effective numbering freeze imposed on Level 3 violates the policies and principles of federal law and Commission rules and regulations with respect to numbering administration. *First*, withholding numbering resources from an eligible

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<sup>60</sup> *Id.*

telecommunications services provider is *not competitively neutral*. Such a denial unduly favors competitors with ample phone numbers in stock to allocate to customers. Those carriers with sufficient inventory can offer service to new customers in rate centers where Level 3 can no longer compete because it must instead turn away customers.

Telecommunications providers with remaining initial numbering assignments therefore have a huge competitive advantage in rate centers where Level 3 is shut out. The PUC in its actions and its direction to NANPA, has arbitrarily singled Level 3 out and prevented it from meeting customer demand.

*Second*, the PUC and staff are not processing Level 3's request in a timely manner. As noted above, the PUC typically needs only 20 days to make a decision.<sup>61</sup> The New Hampshire PUC has not acted on Level 3's appeal for *ten months*. The safety valve process, as provided in the industry guidelines, provides that "If a state does not reach a decision on a safety valve request within a reasonable timeframe, [service providers] may submit such requests to the FCC for resolution."<sup>62</sup>

The PUC's actions and its inordinate delay in acting on Level 3's appeal creates an incentive for carriers to hoard numbering resources to avoid the situation Level 3 finds itself in now – nearing depletion of its inventory during a period of agency inaction. Level 3, as noted above, has complied and cooperated with New Hampshire's requests to reclaim numbers where it can to optimize the efficient use of numbers throughout the state. Further, Level 3 is not requesting large additional numbering resources, but rather thousand block pools only in rate centers where it has exceeded 75 percent exhaust. The

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<sup>61</sup> See Safety Valve Process – "Quick Sheet," available at <http://www.nanpa.com/pdf/Summary Quick Sheet for SV IMG 022708 FINAL.pdf>.

<sup>62</sup> ATIS Guidelines § 12.2.

PUC's inertia in the face of Level 3's reasonable request sets a precedent that will create incentives that the Commission in its rulemakings has been so careful to avoid – incentives for carriers to “build and carry excessively large inventories of numbers”<sup>63</sup> as a type of emergency savings account to protect against such regulatory obstacles.

**III. To the Extent the PUC is Denying Level 3 Access to Numbers Because Level 3 is a Wholesale, not a Retail Provider, the PUC's Action Violate the Commission's Statements Affirming that Wholesale Carriers May Obtain Numbers to Serve Non-Carrier Retail Service Providers.**

The Commission should also make clear that the PUC may not deny the assignment of numbering resources to wholesale carriers because they do not bill end users directly, or are otherwise not the retail service provider. In a confidential letter to the PUC, Staff recommended that Level 3's appeal be denied because, among other things, “Level 3 does not serve local exchange end-users.”<sup>64</sup> The staff cited Commission Order No. 24,727, which 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.” The staff then cited the definition of “local exchange carrier” found in the PUC rules: “the company that provides local telephone exchange service, whether directly or indirectly, and renders the telephone bill to the customer.”<sup>65</sup> The staff stated that it would constitute a “policy change” for the PUC to assign numbering resources to providers of “non-traditional telephone-like service(s),” and

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<sup>63</sup> *In the Matter of Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7578 ¶ 3 (2000).

<sup>64</sup> Exhibit 8 at 1.

<sup>65</sup> N.H. Code Admin. Rules Puc 402.28.



advised that “Level 3 may apply to the FCC for the numbering resources they require to continue their current business.”<sup>66</sup>

As discussed above, it is not a state PUC’s place to make “policy changes” with regard to numbering administration. Such policy-making is within the exclusive jurisdiction of this Commission.<sup>67</sup> The Commission has emphasized the importance of national rules “to ensure efficient and consistent use of . . . numbering resources on a nationwide basis.”<sup>68</sup>

Further, the Commission has already spoken on the issue that appears to bedevil the PUC and its staff – whether a telecommunications carrier that does not itself bill the retail end user may nonetheless obtain numbers to enable a non-carrier to provide non-carrier retail services to the retail end user. In its recent *TRS Numbering Order*, the Commission made clear that it is “consistent with our numbering rules” for a non-carrier provider, such as an interconnected VoIP or IP TRS provider, to obtain numbering resources “through commercial arrangements with carriers (i.e. numbering partners).”<sup>69</sup> The Commission has imposed number porting requirements on interconnected VoIP

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<sup>66</sup> Exhibit 8 at 10.

<sup>67</sup> See *Implementation of the Local Competition Provision of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19,392, 19,512 ¶ 271 (1996).

<sup>68</sup> *In the Matter of Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352, 8371 (1996).

<sup>69</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-151, ¶ 31 (2008). See also *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19,542 ¶ 12 (2007) (within the numbering regulatory framework, interconnected VoIP providers that are not certificated as carriers may obtain numbers through partnering arrangements from entities that are certificated).

providers – a step that was necessary because interconnected VoIP providers can and do receive numbers as part of the telecommunications services they obtain from CLECs.<sup>70</sup> More fundamentally, in its *Time Warner Declaratory Ruling*, the Wireline Competition Bureau held that the distinction between retail and wholesale providers of telecommunications services becomes irrelevant for definitional purposes, and thus that telecommunications carriers are entitled to the same rights with respect to their wholesale services as they would be with respect to retail services. Specifically, the Bureau determined that “the Act does not differentiate between retail and wholesale services when defining ‘telecommunications carrier’ or ‘telecommunications service.’”<sup>71</sup> Thus, the distinction PUC staff has attempted to make between access to numbering resources by a retail carrier that directly bills the end user and access to numbering resources by a wholesale carrier that provides numbers as part of the telecommunications services it provides to the retail service provider contradicts the Commission’s conclusions and the requirement that the PUC provide equitable access to numbering resources. There is no such distinction in the numbering rules, and the PUC cannot impose one by its misdirections to NANPA and its failure to grant Level 3’s safety valve request.

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<sup>70</sup> See *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19,537-8 ¶ 12 (2007) (recognizing that interconnected VoIP service providers must have the capability of offering their customers phone numbers in order to provide services, and that they generally obtain these numbers through commercial arrangements with LECs who obtain them directly from NANPA).

<sup>71</sup> *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. Mar. 1, 2007).

Accordingly, the Commission should once again make clear that carriers are entitled to obtain numbering resources for their wholesale customers, just as they are entitled to obtain numbering resources for retail customers. Any state directive limiting numbers to retail carriers is expressly preempted by the existing numbering rules that permit carriers to obtain numbers.

**IV. The PUC's Actions Should Be Preempted as a Barrier Prohibiting Level 3 from Providing Telecommunications Services.**

Section 253 requires the Commission to preempt the enforcement of a state regulation or legal requirement that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The PUC's action in directing NANPA to withhold numbering resources, and then further holding back resources by failing to act on Level 3's appeal, prohibit Level 3 from obtaining growth assignments to expand its service.

When the Commission granted the PUC's request for additional authority to implement various area code conservation measures in New Hampshire, it made clear that its primary concern was that the PUC not use its delegated authority in any way that might deprive customers of their choice of carrier on demand. The Commission admonished: "Under no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of number resources. For consumers to benefit from the competition envisioned by the Telecommunications Act of 1996, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible."<sup>72</sup>

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<sup>72</sup> *New Hampshire Delegation Order* ¶ 9.

The Commission delegated authority to the PUC to establish fill rates for rate centers and to require applicants for growth codes to demonstrate that they have met the fill rates before obtaining additional numbering resources.<sup>73</sup> In so doing, the Commission stated that its “primary concern is that fill rates not be applied in such a manner as to deprive customers of their choice of carriers from whom to purchase service upon request.”<sup>74</sup>

Customers in New Hampshire, however, are deprived of their choice of carriers.

[\*\*BEGIN CONFIDENTIAL\*\*]

[\*\*END CONFIDENTIAL\*\*] Exhaustion projections demonstrate that this problem will only grow as Level 3 attempts to meet demand in other rate centers and depletes its inventory further.

### CONCLUSION

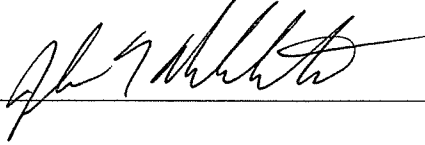
The Commission must put an end to the unlawful *de facto* numbering freeze that the PUC has selectively and discriminatorily imposed on Level 3. Level 3 meets the requirements for additional growth codes in the rate centers listed in Exhibit 1. The Commission should immediately direct NANPA to assign Level 3 an additional thousand block in each of these rate centers within the 603 area code.

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<sup>73</sup> See *id.* ¶¶ 13-17.

<sup>74</sup> *Id.* ¶ 14.

Respectfully submitted,



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William P. Hunt III  
Michael P. Donahue  
Greg L. Rogers  
LEVEL 3 COMMUNICATIONS, LLC  
1025 Eldorado Boulevard  
Broomfield, Colorado 80021  
(720) 888-2516

John T. Nakahata  
Linda Coffin  
HARRIS, WILTSHIRE & GRANNIS LLP  
1200 Eighteenth Street, NW  
Washington, DC 20036  
(202) 730-1320  
*Counsel for Level 3 Communications, LLC*

July 18, 2008

## **Exhibit 1**

**[REDACTED – FOR PUBLIC  
INSPECTION]**

## **Exhibit 2**

- **[REDACTED – FOR PUBLIC INSPECTION]**

## **Exhibit 3**



Exhibit 3

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of

Emergency Petition of Level 3  
Communications, LLC, for the Assignment  
of Additional Telephone Numbers in Area  
Code 603, and for Preemption of the  
Actions of the New Hampshire Public  
Utilities Commission Pursuant to Section  
253 of the Communications Act of 1934

WCB Docket No. \_\_\_\_\_

**Declaration of Shaun Giesler**  
**On Behalf of Level 3 Communications, LLC**

1. My name is Shaun Giesler. I am the Director of Numbering Administration for Level 3 Communications, LLC ("Level 3"). I manage a team whose duties include aspects of managing Level 3's internal numbering inventory, including filing Numbering Resource Utilization/Forecast (NRUF) reports, overseeing telephone number policy, filling orders and back-orders for telecommunications services that require the assignment of telephone numbers, managing donations for number pooling and reclamation procedures, completing applications for initial number assignments and growth codes.
2. I am providing this declaration in support of the Emergency Petition of Level 3 ("Petition") requesting that the Commission direct the North American Numbering Plan Administrator to assign Level 3 additional thousand blocks of telephone numbers in each area in which Level 3 meets the industry guidelines of 75 percent utilization and six months or less until projected exhaust, including specifically the

**[\*\*BEGIN CONFIDENTIAL\*\*]** [REDACTED] **[\*\*END CONFIDENTIAL\*\*]** rate centers listed in Exhibit 1 to the Petition.

3. Level 3 is certified in New Hampshire as a facilities-based telecommunications carrier with an international network optimized for Internet Protocol technology. Level 3 offers direct inward dial (“DID”) and direct outward dial (“DOD”) services that allow for local connectivity to the public switched telephone network (“PSTN”) by Level 3’s customers and their end users.

4. In New Hampshire, Level 3 faces a critical shortage of telephone numbers that directly affects its ability to provision these services to its customers. **[\*\*BEGIN**

**CONFIDENTIAL\*\*]** [REDACTED]

[REDACTED] **[\*\*END CONFIDENTIAL\*\*]**

5. As with any other carrier interconnected with the PSTN, Level 3’s telecommunications services rely on the assignment and use of public telephone number resources as an integral part of its service offerings. However, unlike some other carriers, Level 3’s business model has historically focused on wholesale services. A large percentage of Level 3’s services, both in New Hampshire and across the country, are

provided to other carriers, interconnected VoIP providers, Internet Service Providers (“ISPs”), and enhanced service providers (“ESPs”) that use Level 3’s telecommunications services to provide their own telecommunications, interconnected VoIP and/or information services. Level 3 is providing service for end users physically located in all of the rate centers in New Hampshire in which it holds numbering resources.

6. In New Hampshire, as in 47 other states, Level 3 has requested and has been granted NXX or NXX-X codes from NANPA for its local exchange carrier operations.<sup>1</sup> Level 3’s operations and services in other states are substantially similar to its operations in New Hampshire.

7. The assignment of telephone numbers is an essential component of Level 3’s offerings of interconnection, connectivity to the PSTN and 911 services to its wholesaler customers, as well as to enterprise users. Level 3’s VoIP, ISP, ESP and enterprise customers pay Level 3 for services that include the use of telephone numbers, just as other consumers of local telephone service do. When telephone numbers are provided with services that are sold to VoIP, ISP, ESP and enterprise customers, the service is working and available and the numbers can be used by its customers at any time.

8. As shown in the utilization rate chart attached to the Petition as Exhibit 2, Level 3 is already at exhaust in some rate centers and nearly at exhaust in several more. In **[\*\*BEGIN CONFIDENTIAL\*\*]** [REDACTED] **[\*\*END CONFIDENTIAL\*\*]** rate centers, Level 3 has 10 or fewer telephone numbers remaining per thousand block and utilization

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<sup>1</sup> Level 3 does not utilize its own numbering resources to offer its local exchange services in Alaska, Hawaii and Maine.

is over 99 percent with several at complete exhaust. In **\*\*BEGIN CONFIDENTIAL\*\*** **\*\*END CONFIDENTIAL\*\*** of these rate centers, Level 3 is assigned only a single thousand block. There are **\*\*BEGIN CONFIDENTIAL\*\*** **\*\*END CONFIDENTIAL\*\*** rate centers that have more than 90 percent utilization. As of July 7, 2008, Level 3's telephone number utilization exceeds 75 percent in **\*\*BEGIN CONFIDENTIAL\*\*** **\*\*END CONFIDENTIAL\*\*** New Hampshire rate centers, and in each of these rate centers, Level 3 projects exhaust in less than six months. Level 3 has to date only applied for growth codes in **\*\*BEGIN CONFIDENTIAL\*\*** **\*\*END CONFIDENTIAL\*\*** of these **\*\*BEGIN CONFIDENTIAL\*\*** **\*\*END CONFIDENTIAL\*\*** rate centers.

9. Level 3 has reclaimed a substantial amount of numbers from its wholesale customers and reassigned them to fill other service orders, using Level 3's inventory even more efficiently. As a result of Level 3's reclamation efforts, it has reduced the number of growth codes that is requesting through this petition.

10. Level 3 participates in thousand block number pooling in New Hampshire. As part of its implementation of number pooling, Level 3 donated **\*\*BEGIN CONFIDENTIAL\*\*** **\*\*END CONFIDENTIAL\*\*** blocks of area code 603 numbers, **\*\*BEGIN CONFIDENTIAL\*\*** **\*\*END CONFIDENTIAL\*\*** from its initial assignment of NXX codes. Level 3's pooling donations are shown in Level 3's NRUF report. As reflected in Level 3's most recent report, Level 3 is assigned and has not donated back **\*\*BEGIN CONFIDENTIAL\*\*** **\*\*END CONFIDENTIAL\*\*** NPA-NXX-X codes.

11. In recognition that telephone numbers are a finite public resource, and to prevent unnecessary rate center depletion, Level 3 has adopted an internal customer telephone number policy. The policy includes a "limit-per-rate-center rule," whereby any request for 200 or more numbers is reviewed carefully to determine whether the order should be filled or denied. As part of its policy, Level 3 has adopted internal reclamation procedures, and requirements that Level 3's customers take an active role in efficiently managing the telephone numbers they obtain from Level 3.

12. Notwithstanding its reclamation efforts, Level 3's customers continue to need more numbers as demand for services grows. Nonetheless, Level 3 has been unable to obtain additional numbers for New Hampshire rate centers since 2005. Indeed,

**[\*\*BEGIN CONFIDENTIAL\*\*]** [REDACTED]

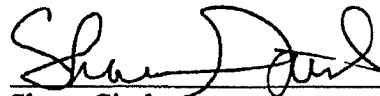
**[\*\*END CONFIDENTIAL\*\*]** because of its lack of access to growth number resources.

13. To address this problem, Level 3 has applied to NANPA for additional thousand blocks three times since 2005 – in September 2005, April through August 2007, and most recently on May 29, 2008. Copies of Level 3's applications to NANPA, which include Parts 1A and 1B, the Months-to-Exhaust worksheets, and the Pooling Administrator's Responses, are attached to the Petition as Exhibit 5. Although Level 3 applied for growth codes in **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** different rate centers in its 2007 and 2008 requests, Level 3 includes in the Petition only the requests for the **[\*\*BEGIN CONFIDENTIAL\*\*]** **[\*\*END CONFIDENTIAL\*\*]** rate centers that have exceeded 75 percent utilization as of July 7, 2008.

14. For each application in Exhibit 5, NANPA denied Level 3's request for the same reason: "According to the New Hampshire Public Utilities Commission, [Level 3 is] not certified in the area in which [it is] requesting numbering resources." An example of such a denial is also attached to the Petition at Exhibit 4.

**VERIFICATION**

I, Shaun Giesler, declare under penalty of perjury that the foregoing declaration is true and correct. Executed on July 17, 2008.

  
Shaun Giesler

## **Exhibit 4**

**[REDACTED – FOR PUBLIC  
INSPECTION]**



## **Exhibit 5**

**[REDACTED – FOR PUBLIC  
INSPECTION]**

## **Exhibit 6**

# Orr&Reno

*Professional Association*

One Eagle Square, P.O. Box 3550, Concord, NH 03302-3550  
Telephone 603-224-2381 • Facsimile 603-224-2318  
www.orr-reno.com

September 12, 2007

Malcolm McLane  
(Retired)

## HAND DELIVERED

Ronald L. Snow  
William L. Chapman  
George W. Roussos  
Howard M. Moffett  
James E. Morris  
John A. Malmberg  
Martha Van Oot  
Douglas L. Patch  
Connie L. Rakowsky  
Jill K. Blackmer  
James P. Bassett  
Emily Gray Rice  
Steven L. Winer  
Peter F. Burger  
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Todd C. Fahey  
Vera B. Buck  
James F. Laboe  
Robert S. Carey  
John M. Zaremba  
Maria M. Proulx  
Jessica E. Storey  
Justin M. Boothby  
Heidi S. Cole

Debra A. Howland  
Executive Director & Secretary  
New Hampshire Public Utilities Commission  
21 S. Fruit St., Suite 10  
Concord, NH 03301-2429

**Re: *Level 3 Communications, LLC's Appeal of the North American  
Numbering Plan Administration's Denial of Numbering  
Resources***

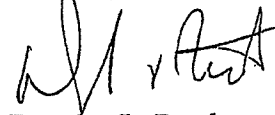
Dear Executive Director Howland:

Enclosed are an original and eight copies of Level 3 Communications, LLC's Appeal of the North American Numbering Plan Administration's Denial of Numbering Resources. We have enclosed an additional copy and request that it be date stamped and returned to verify the filing. As noted in the Appeal, Level 3 Communications, LLC respectfully requests that the Commission expedite the consideration of this Appeal.

Please let me know if you have any questions. Thank you for your assistance.

Susan S. Geiger  
Judith A. Fairclough  
(Of Counsel)

Sincerely,



Douglas L. Patch

Enclosures

cc: Office of Consumer Advocate

448404\_1.DOC

**STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

<b>IN RE:</b>	)	<b>DOCKET NO. _____</b>
	)	
<b>LEVEL 3 COMMUNICATIONS, LLC's</b>	)	
<b>APPEAL OF THE NORTH AMERICA</b>	)	
<b>NUMBERING PLAN ADMINISTRATION'S</b>	)	
<b>DENIAL OF NUMBERING RESOURCES</b>	)	

Level 3 Communications, LLC ("Level 3") hereby appeals the North American Numbering Plan Administration's ("NANPA") denials of Level 3's requests for telephone number resources in rate centers in New Hampshire where it has met the requisite use threshold and must obtain more resources to meet future demand for its competitive services ("growth codes"). Level 3 respectfully requests that the New Hampshire Public Utilities Commission ("Commission") instruct NANPA to find that Level 3 has met the stated utilization requirements and grant Level 3's requests for growth codes. In support of its appeal Level 3 states as follows:

1. Level 3 is a certified, facilities-based telecommunications carrier with an international network optimized, end-to-end, for Internet Protocol ("IP") technology. Since 1998, Level 3 has provided local exchange telecommunication services in New Hampshire. Specifically, Level 3 offers direct inward dial ("DID") and direct outward dial ("DOD") services that allow for local connectivity to the public switched telephone network ("PSTN") by Level 3's customers and their end users. Level 3's local exchange telecommunications services rely upon the assignment and use of telephone number resources as an integral part of its service offerings to Internet Service Providers ("ISP"), enhanced service providers ("ESPs") and other carriers and

their customers in New Hampshire. Level 3 also provides E911 services to support some of its voice over Internet Protocol ("VoIP") customers in New Hampshire. Level 3 has continued demand for its services and it intends to expand these service offerings in New Hampshire; however, in order to be able to do so, Level 3 must have fair and non-discriminatory access to additional numbering resources.

2. On July 21, 1998, Level 3 filed with the Commission a petition for authority to provide local telecommunications services in New Hampshire. The Commission granted that application on September 28, 1998 *See Level 3 Communications LLC Petition for Authority to Provide Local Telecommunications Services*, Order Nisi Granting Authorization, DE 98-13, Order No. 23,011.

3. Level 3 has requested and has been granted NXX codes from NANPA for its operations in 48 states, including New Hampshire, and the District of Columbia. Level 3's operations and services in these states are substantially similar to the operations Level 3 is currently providing in New Hampshire.

4. In Docket DT 00-223, opened more than seven years ago, the Commission has grappled with numbering issues, including virtual numbering for Internet Access NXX ("IANXX"), a statewide service for information access to be used for dial-up calls to Internet service providers for end-user access to the Internet, as well as CLEC foreign exchange ("CLEC FX"), which the Commission defined as FX-like service for non-ISP bound traffic when a CLEC is providing local dial tone via its own facilities in a particular exchange (local nexus). For close to two years now, implementation of IANXX and CLEC FX has been suspended while Staff conducts an investigation into the provision of VoIP service. In that time much has

changed from a regulatory perspective at the federal level and in other states. Following the Commission's implementation of its rules for allocation of numbering resources for virtual NXX ("VNXX"), IANXX and CLEC FX situations,<sup>1</sup> Commission Staff ("Staff") determined that Level 3 would not be allowed to obtain numbering resources in most rate centers throughout New Hampshire where it currently held them. As part of the investigation into the question of how wholesale telecommunications providers and VoIP services would be treated under the IANXX and CLEC FX rules, Staff required that Level 3 undertake an effort to reclaim all available telephone numbers from its ESP customers before Staff would agree to allow Level 3 to obtain growth codes because Staff disagreed with Level 3's reporting of number utilization as a wholesale provider. In response, Level 3 has undertaken extensive reclamation efforts and has maximized its current inventory of numbers. Despite these efforts, many of Level 3's code blocks exceed seventy percent (70%) utilization and several are nearing 100% utilization.

5. Even after Level 3's reclamation efforts, however, Staff, through the direction it has given to NANPA, has denied additional numbering to Level 3. As a result, Level 3's inventory has been frozen for approximately two years, preventing Level 3 from meeting customer demand or expanding its operations in New Hampshire. Level 3 continues to have to deny valid orders for service in New Hampshire rate centers because of the unavailability of additional numbering resources. Staff's and NANPA's continued refusal to provide additional numbering resources to Level 3 in the face of Level 3's obvious eligibility for such resources serves only to further delay the availability of competitive telecommunications services to New

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<sup>1</sup> *Investigation As to Whether Certain Calls Are Local*, DT 00-223; *Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas*, DT 00-054, Order No. 24,080, Final Order 88 NH PUC 749 (2002) ("VNXX Order").

Hampshire consumers in direct contravention of the fundamental goals of the Telecommunications Act of 1996. 47 U.S.C. § 251(e)(1).

6. Level 3 has attempted to work cooperatively with the Staff and other telecommunications providers on solutions that would provide Level 3 with necessary numbers while conserving numbering resources to the greatest extent possible. In fact, Level 3 cooperated with an audit of its number utilization and has implemented all conservation measures required of other carriers in New Hampshire as well as additional measures, including reclaiming and reassigning unused numbers, to utilize New Hampshire numbering resources efficiently. These efforts have taken substantial time and, to date have not resulted in an operative solution.

7. On June 20, 2007, Level 3 applied for NXX codes from NANPA for use in New Hampshire. (See NANPA Part 1A application. [Attachment A]).<sup>2</sup> NANPA denied these requests on June 25, 2007, on the grounds that Level 3 "is not certified in the area in which [it] request[ed] numbering resources." [Attachment B].

8. Level 3 is now prejudiced by the delay and is losing opportunities to serve customers. Level 3 brings this appeal to obtain a resolution that would allow it to continue expanding its service offerings in New Hampshire. Further delay has a significant adverse financial impact on Level 3 and is a barrier to the competitive benefits Level 3 and its customers bring to New Hampshire consumers. Level 3 has done everything within its control and the

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<sup>2</sup> Only a redacted version of the Part 1A is attached to document Level 3's application for number resources because Level 3 considers the information identifying the exact code requests confidential. Each of the other applications was submitted on the same day and is substantively similar with the exception of the specific location information. Similarly, Attachment B is only one of the many responses denying Level 3's code requests and certain information is redacted. The other denials were all on the same day and are substantially similar. If it would

current regulatory regime to comply with the rules for number utilization and to conserve numbering resources while attempting to compete on a level playing field in New Hampshire. Now, Staff and NANPA, by denying additional numbering resources to Level 3 while granting numbers to Level 3's competitors, have arbitrarily singled Level 3 out and prevented it from being able to meet customer demand for new, innovative, competitive telecommunications services in New Hampshire in violation of the fundamental principals of the Telecommunications Act, the Federal Communications Commission's ("FCC") orders and rules, this Commission's orders, and New Hampshire law.

9. Any concerns Staff or NANPA may have had about number exhaust in denying growth codes to Level 3 is belied by the FCC's and NANPA's own reporting on number utilization. Specifically, both NANPA and the FCC have recently determined there is no imminent threat of number exhaust and relief status has been denied for NPA 603. NANPA's most recent NPA Relief Activity Status report (available at [http://www.nanpa.com/reports/NPA\\_Relief\\_Activity\\_Status\\_Report\\_070107.xls](http://www.nanpa.com/reports/NPA_Relief_Activity_Status_Report_070107.xls)), for July 2007, demonstrates that New Hampshire is not forecast to have number exhaust until the second quarter of 2010 and specifically notes that relief status is "Dismissed." NANPA's published April 2007 NANPA Exhaust Analysis (available at [http://www.nanpa.com/pdf/NRUF/2007\\_1\\_NPA\\_Exhaust\\_Projections.pdf](http://www.nanpa.com/pdf/NRUF/2007_1_NPA_Exhaust_Projections.pdf)) also states that NPA 603 is not forecast for exhaust until the second quarter 2010. Finally, the FCC's most recent numbering report states that of the numbers currently assigned to carriers, only 45% are assigned to subscribers in New Hampshire and that 51% of the numbers assigned to carriers remain

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be helpful, Level 3 would be happy to provide this additional information in conjunction with a request for confidential treatment.



available for assignment to subscribers. *Numbering Utilization in the United States*, Federal Communications Commission, Industry Analysis and Technology Division (rel. Aug. 8, 2007) (available at [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-275830A1.pdf](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-275830A1.pdf)).

Significantly, the FCC's report does not include numbers that have not yet been assigned to carriers, which would further increase the available numbering resources.

10. Pursuant to the FCC's Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 99-200, 15 FCC Rcd 7574 (2000) ("*First Numbering Order*") at ¶ 98 Level 3 has the authority to appeal the denial of numbering resources to the Commission and the Commission has jurisdiction to hear such an appeal. The Commission also has authority under New Hampshire law to take jurisdiction over this appeal. RSA 374:3.

11. The denial of numbering resources to Level 3 is contrary to the FCC's order delegating authority over numbering resources to this Commission. As the FCC noted in that order: "[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources." *In the Matter of New Hampshire Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures in the 603 Area Code*, 15 F.C.C.R. 1252, CC Docket No. 96-98, DA 99-2634, at ¶ 9 (Nov. 30, 1999) ("*Delegation Order*").

12. Level 3 states that if allowed to stand by the Commission, the denial by NANPA of Level 3's requested numbering resources is unlawful in, among other ways and without limitation, the following particulars that will be established in the course of this appeal:

a. By denying Level 3 necessary numbering resources, NANPA has created a complete barrier to Level 3's expansion in New Hampshire that if allowed to stand by the Commission will violate 47 U.S.C. § 253 and RSA 374:59. In delegating numbering authority to the Commission in the *Delegation Order*, the FCC required that numbering resources be used fairly and efficiently. Specifically, the FCC stated that consumers should not be denied the right to select telecommunications services of their choice from providers of their choice as a result of numbering issues, noting that "[f]or consumers to benefit from the competition envisioned by the Telecommunications Act of 1996, it is imperative that competitors in the telecommunications marketplace face as few barriers to entry as possible." *Delegation Order*, at ¶ 9. Additionally, under RSA 374:59, the Commission must adopt numbering measures "to provide that all customers of all suppliers have equitable access to currently available unassigned telephone numbers." That statute also provides that the Commission adopt measures to provide "equitable access to numbers that have not been assigned to a customer which are available for porting to a second supplier." RSA 374:59, III. *See also*, Chapter 263, Laws of 2005 ("The policy of this state is to promote competition and the offering of new and alternative telecommunications services while preserving universal access to affordable basic telephone services."). Consequently, denying additional numbering resources to Level 3 acts as a complete barrier to Level 3's expansion of service to additional customers and denies equitable access to numbering resources to ISP and VoIP customers in violation of state and federal law;

b. By denying Level 3 necessary numbering resources, NANPA has acted in a manner which is not competitively neutral, that if allowed to stand by the Commission will violate 47 U.S.C. §§ 251(e)(1) and 253; 47 C.F.R. §§ 52.9(a)(1) and (2), § 52.13(b); in that

providers of ISP service or VoIP service who are competitors or potential competitors of Level 3, but who are also voice carriers, are advantaged in their provision of non-voice ISP services and VoIP services as compared to Level 3;

c. NANPA's decision to deny Level 3's requests for codes is arbitrary and capricious in that NANPA has previously provided Level 3 codes for the same services in 49 states, including New Hampshire, and the District of Columbia. The *First Numbering Order* establishes two requirements that must be met in order to receive initial numbering resources. First, the applicant must provide documented proof that it is "authorized to provide service in the area for which numbering resources are requested." *First Numbering Order* at ¶96. Second, the applicant must provide documented proof that it is prepared to offer services within 60 days of the numbering resources activation date. *Id.* Among other things, the *Delegation Order* stated that this requirement can be satisfied by evidence of an effective interconnection agreement. *Id.* at 97. In the *Delegation Order*, the FCC also authorized the Commission to require a carrier to demonstrate that it will have the necessary facilities to serve a specific rate center within six months of assignment of an NXX code for use in that rate center. *Delegation Order*, at ¶ 12. A carrier, such as Level 3, that satisfies these requirements, may obtain additional/growth codes by demonstrating its existing block(s) have reached a 75% fill-rate and participating in number pooling where it is implemented. *Implementation of Number Conservation Methods Authorized by the Federal Communications Commission*, DT 00-001, Order No. 23, 454 (May 1, 2000) ("*Number Pooling Order*"). In granting Level 3 initial numbering resources in New Hampshire, NANPA previously determined that Level 3 is certified in New Hampshire and has demonstrated the ability to use telephone numbers by virtue of its established interconnections. Level 3 is now

seeking fair, non-discriminatory application of the Commission's growth code requirements. NANPA's recent denial of Level 3's requests for growth codes contradicts all of the prior approvals and the *Number Pooling Order* requirements, and violates the FCC's *First Numbering Order*. Further, these stated requirements must be read in the context of ¶¶ 94 and 96 of the *First Numbering Order*, which make it clear the intent of the Commission is to prevent carriers from "stockpiling" numbers in advance of increasing their geographic coverage within a state. The concern over "stockpiling" does not apply in the present case because Level 3 has been offering services in these rate centers already and is simply seeking to be able to meet continued demand in the rate centers now that it has surpassed the established utilization thresholds. Nothing has changed with respect to the fundamental requirements to obtain numbering resources or Level 3's circumstances to justify a determination that Level 3 is not certified in the areas in which it requested additional telephone numbers;

d. NANPA's decision to deny Level 3's requests for growth codes violates the FCC's *First Numbering Order* ¶¶ 96 and 97, the *Delegation Order*, and the *Number Pooling Order*. As discussed above, Level 3 is "authorized to provide service in the area for which numbering resources are requested" by virtue of the authority granted Level 3 by the Commission in Order No. 23,011. Further, the fact that Level 3 is prepared to offer services within 60 days of the activation of numbering resources (*First Numbering Order*, at ¶ 96) is demonstrated by Level 3's existing service offerings in the areas in which it requested additional numbering resources. Likewise, Level 3 can demonstrate that it will have the necessary facilities to serve the rate centers in which it requests numbers because Level 3 already has facilities serving those areas, either via its own facilities or interconnection with another LEC. Finally,

Level 3 is participating in number pooling and has demonstrated that its existing blocks are at or above the 75% fill-rate;

e. NANPA's decision to deny Level 3's requests for codes is arbitrary and capricious in that NANPA has previously provided IDT America, Corp. ("IDT") codes to provide the same type of services in New Hampshire for which Level 3 now seeks growth codes. For example, the Commission recently granted numbering resources to IDT, a CLEC competitor of Level 3, for the provision of services to MetroCast Cablevision of New Hampshire, LLC ("MetroCast") in connection with MetroCast's VoIP service offering in New Hampshire. *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). Significantly, the services IDT proposed to provide MetroCast in New Hampshire are similar to the service Level 3 provides now in New Hampshire – connectivity to the PSTN, "local number port-in and port-out, enhanced 911 interconnection, operator/directory assistance, directory listings, and numbering resources."<sup>3</sup>;

f. Further, in light of the FCC's *Time Warner* decision, the distinction between retail and wholesale providers of telecommunications services becomes irrelevant for purposes of obtaining interconnection. Specifically, the FCC determined that "because the Act does not differentiate between retail and wholesale services when defining 'telecommunications carrier' or 'telecommunications service, . . . telecommunications carriers are entitled to

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<sup>3</sup> *Id.* at 2. The similarity between the services IDT proposed to provide and those Level 3 currently provides customers in New Hampshire warrant similar treatment with respect to numbering resources. To the extent the Commission's support of the settlement agreement in the IDT case is based upon a requirement that all of the end users be physically located in the rate center for which numbering resources are requested – a requirement that could only be met by the ILEC or a cable company like MetroCast – such a requirement is discriminatory and violates the *First Numbering Order* and the *Delegation Order*.

interconnect and exchange traffic with incumbent LECs pursuant to section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services.” *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carrier 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. Mar. 1, 2007). See also *Berkshire Telephone Corporation et al. v. Sprint Communications Company, L.P., New York Public Service Commission, et al.*, 2006 U.S. Dist. LEXIS 78924 (Decided October 26, 2006), where the Court found that a CLEC and a cable company which were together providing local exchange service to end users, have rights under section 251 of the Telecommunications Act and rejected arguments that the incumbent telephone company was not required to provide interconnection to the CLEC because the CLEC did not have a direct relationship with the end users. Thus, “providers of wholesale telecommunications services enjoy the same rights as any ‘telecommunications carrier’ under [the Act]”. *Id.* at ¶ 9. The retail/wholesale distinction Staff has attempted to make in order to deny numbering resources to Level 3, flies in the face of the FCC’s conclusions and the Commission’s requirement to provide equitable access to numbering resources;

g. Finally, even though Level 3 has objected to the development and implementation of restrictions on use of numbering related to VNXX architectures, consistent with the Commission’s requirements for obtaining new NXX blocks, Level 3 has established and demonstrated a sufficient local nexus in the areas in which it provides service to be eligible for additional numbering resources in those areas. See CLEC FX-Eligibility list at

<http://www.puc.state.nh.us/Telecom/2004%20CLEC%20FX%20Reporting%20Companies.pdf>

Accordingly, Level 3 has satisfied the requirements for obtaining additional numbering resources in New Hampshire in all respects. NANPA failed to recognize that Level 3's current services and current utilization of numbering resources are more than sufficient to meet the requirements set out in ¶¶ 96 and 97 of the *First Numbering Order*, the *Delegation Order*, and this Commission's requirements.

13. The denial of access to numbering resources violates the authority over numbering resources that the FCC conditionally delegated to the Commission in the *Delegation Order*. In that order the FCC unequivocally stated that "[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for want of numbering resources." *Delegation Order* at ¶ 9. The FCC's delegation of numbering authority to the Commission does not give the Commission authority to impose conditions on how a carrier does business. The FCC's rules require that the administration of telephone numbers achieve three goals: "(1) Facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers; (2) Not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and (3) Not unduly favor one telecommunications technology over another." 47 C.F.R. § 52.9(a). The denial of additional numbering resources to Level 3 in this instance is tantamount to an illegal exercise of authority by the Commission.

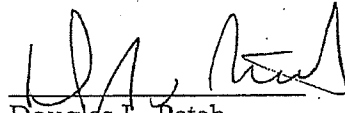
14. The denial of necessary regulated resources to permit Level 3 to conduct business in New Hampshire as it does in other states also implicates Level 3's constitutional rights under

the commerce, due process, and takings clauses of the United States Constitution. The denial also implicates Level 3's constitutional rights under the New Hampshire Constitution, Part. 2 Article 83, which says: "Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it."

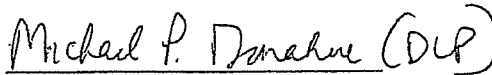
15. Level 3 stands prepared to exercise all reasonable and necessary efforts to conserve New Hampshire's numbering resources consistent with New Hampshire law and with the federal law, rules and FCC orders.

Accordingly, Level 3 respectfully requests that the Commission enter an order on an expedited basis requiring NANPA to grant Level 3's past and future code requests and grant such other relief as is just and equitable.

Respectfully submitted this 24 day of September, 2007.



Douglas L. Patch  
Orr & Reno, P.A.  
One Eagle Square  
Concord, NH 03301  
Phone: 603.224.2381  
Direct Ext: 603.223.9161  
Fax: 603.223.9061  
E-mail: DPatch@orr-reno.com



Michael P. Donahue  
Greg L. Rogers  
Senior Regulatory Counsel




Level 3 Communications, LLC  
2300 Corporate Park Drive  
Suite 600  
Herndon, VA 20171  
Telephone: (703) 234-8891  
FAX: (703) 234-8830  
E-mail: [Michael.Donahue@level3.com](mailto:Michael.Donahue@level3.com)


ATTORNEYS FOR  
LEVEL 3 COMMUNICATIONS, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this appeal has been sent by first class mail and electronically to the Office of Consumer Advocate on this 12th day of September, 2007.

  
\_\_\_\_\_  
Douglas L. Patch

# Pooling Administration System

 sathish.ranganathan@level3.com (SP)

Sign Out

## Part 1A

Type of Application <sup>i</sup>: New

Tracking Number :

### 1.1 Contact Information :

*Note: If any of the contact info is incorrect, edit your user profile.*

#### Block Applicant :

Company Name LEVEL 3 COMM - NH

Headquarters Address 1025 Eldorado Blvd

City Broomfield

State CO

Zip 80021

Contact Name Arunkumar Palanivelu

Contact Address 1025 Eldorado Blvd

City Broomfield

State CO

Zip 80021

Telephone (720) 888-2888

Fax

E-mail arunkumar.palanivelu@level3.com

#### Pooling Administrator <sup>ii</sup>:

Contact Name Dora Wirth

Contact Address 1800 Sutter St. Ste. 780

City Concord

State CA

Zip 94520

Telephone (925) 363-8706

Fax (925) 363-7684

E-mail dora.wirth@neustar.com

### 1.2 General Information

LRN Needed <sup>iii</sup> NO

NPA 603

LATA 122

OCN <sup>iv</sup> 4017 - LEVEL 3 COMM - NH

Parent Company OCN 8824

Number of Thousands-Blocks  
Requested <sup>1</sup>Switch Identification (Switching  
Identity/POI) <sup>v</sup>City or Wire Center  
NameRate Center <sup>vi/sup></sup>Rate Center Sub  
Zone NA

### 1.3 Dates

Date of Application <sup>vii</sup> 06/20/2007

Requested Block Effective  
Date <sup>viii</sup> 07/21/2007

Request Expedited Treatment Y

### 1.4 Type of Service Provider Requesting the Thousands-Block

a) Type of Service Provider CAP OR CLEC

b) Primary type of service  
Blocks to be used for Wireline

c) Thousands-Block(s) (NPA-  
NXX-X) assignment preference 603-968-6,

d) Thousands-Block(s) (NPA-  
NXX-X) that are undesirable  
for this assignment, if any

e) If requesting a code for LRN  
purposes, indicate which  
block(s) you will be keeping  
(the remainder of the blocks  
will be given to the pool)

### 1.5 Type of Request

Initial block for rate center  
Growth block for rate center Yes  
Change block  
Disconnect block

Remarks

I hereby certify that the above information requesting an NXX-X block is true and accurate to the best of my knowledge and that this application has been prepared in accordance with the Thousands-Block (NXX-X) Pooling Administration Guidelines (ATIS-0300066)

### Instructions for filling out each Section of the Part 1A form:

Section 1.1 Contact information requires that Service Providers supply under "Block Applicant" the company name, company headquarters address, a contact within the company, an address where the contact person may be reached, in addition to the correct phone, fax, and e-mail address. The Pooling Administrator section also requires the Service Provider to fill in the Pooling Administrator's name, address, phone, fax and e-mail.

Section 1.2 Service Providers who need a thousands-block assignment or for an Location Routing Number (LRN) are required to fill in this section. If needed for an LRN, a CO Code Application needs to also be submitted to the PA. The Service Provider should supply the Numbering Plan Area (NPA); the Local Access Transport Area (LATA), which is a three-digit number that can be found in the Telcordia<sup>TM</sup> LERG<sup>TM</sup>

Routing Guide. The Operating Company Number (OCN) assigned to the service provider and the OCN its parent company. An OCN is a four-character alphanumeric assigned by Telcordia<sup>TM</sup> Routing Administration (TRA). In addition, the number of thousands-blocks requested should be supplied. The Switch Identification as well as the city or wire center name, rate center, rate center sub zone, homing tandem and CLLI<sup>TM</sup> tandem of the facilities based provider<sup>vii</sup>. Explanations of these terms may be found in the footnotes.

Section 1.3 The date the Service Provider completes the application should be entered in this section, as well as the Effective Date of the requested thousands-block.

Section 1.4 Service Providers should indicate their type, e.g., local exchange carrier, competitive local exchange carrier, interexchange carrier, CMRS. They also indicate the primary type of business in which the numbering resource is to be used. Service Providers also may indicate their preference for a particular thousands-block, e.g., 321-9XXX, or indicate any thousands-blocks that may be undesirable, e.g., 321-6XXX.

Section 1.5 Service Providers indicate the type of request. Initial requests are for first applications for thousands-blocks in a rate center, growth for additional thousands-blocks in a rate center in which the applicant already has numbering resources, and provide the required evidence as ordered by the FCC.

The thousands-block applicant certifies veracity of this form by signing their name, and providing their title and date.

**Foot Notes:**

<sup>i</sup> Identify type of and reason for change(s) in Section 1.5.

<sup>ii</sup> The Pool Administrator is available to assist in completing these forms.

<sup>iii</sup> A CO Code application will also need to be submitted to the PA.

<sup>iv</sup> Operating Company Number (OCN) assignments must uniquely identify the applicant. Relative to CO Code assignments, NECA-assigned Company Codes may be used as OCNs. Companies with no prior CO Code or Company Code assignments should contact NECA (800 524-1020) to be assigned a Company Code(s). Since multiple OCNs and/or Company Codes may be associated with a given company, companies with prior assignments should direct questions regarding appropriate OCN usage to (TRA) (732-699-6700).

<sup>v</sup> This is an eleven-character descriptor of the switch provided by the owning entity for the purpose of routing calls. This is the 11 character CLLI<sup>TM</sup> code of the switch /POI.

<sup>vi</sup> Rate Center name must be a tariffed Rate Center.

<sup>vii</sup> Acknowledgment and indication of disposition of this application will be provided to applicant within seven calendar days from the date of receipt of this application. An incomplete form may result in delays in processing this request.

<sup>viii</sup> Please ensure that the NPA-NXX of the LRN to be associated with this block(s) is/will be active in the network prior to the effective date of the block(s).

<sup>ix</sup> Telcordia, LERG Routing Guide, and CLLI are trademarks of Telcordia Technologies, Inc.

# Pooling Administration System

Dated 25 June 2007

## Pooling Administrator's Response/Confirmation Part 3

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Tracking Number	
Date of Application 06/20/2007	Block Effective Date
Date of Receipt 06/20/2007	Date of Response 06/25/2007
Service Provider Name Level 3 Communications	
(Telcordia <sup>TM</sup> LERG <sup>TM</sup> 4017-LEVEL 3 COMM - NH	
Routing Guide) OCN	
NPAC SOA SPID 8824	

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### Pooling Administrator Contact Information :

Name Dora Wirth	
Phone (925) 363-8706	Fax (925) 363-7684
E-Mail dora.wirth@neustar.com	

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### Response

—	NPA-NXX-X 0-0-0	Block Assigned
		Block Disconnected
Block Contaminated (Yes or No)		
Block Allocation Date		
Switch Identification		
(Switching Entity / POI) <sup>1</sup>		
Rate Center		
Rate Center Sub Zone NA		

### X Form Complete, block requested denied

#### Explanation :

DR-47: According to the New Hampshire Public Utilities Commission, you are not certified in the area in which you are requesting numbering resources. If you are in disagreement with the disposition of this request, please contact Jody O'Marra with the New Hampshire Public Utilities Commission at 603-271-6554.

— **Assignment activity suspended by the  
administrator**

Explanation :

Further Action :

Remarks :

<sup>1</sup>This is an eleven-character descriptor provided by the owning entity for the purpose of routing calls. This must be the CLLI<sup>TM</sup> Location Identification Code of the switching entity/POI shown on the Part 1A form. (Telcordia, LERG Routing Guide and CLLI are trademarks of Telcordia Technologies, Inc.)

---

Pooling Administrator  
Dora Wirth  
1800 Sutter St. Ste. 780  
Concord, CA 94520  
Phone:(925) 363-8706  
Fax:(925) 363-7684

## **Exhibit 7**

LEVEL 3 COMMUNICATIONS LLC

Petition for Authority to Provide  
Local Telecommunications Services

Order Nisi Granting Authorization

O R D E R N O. 23,011

September 2, 1998

On July 21, 1998, Level 3 Communications L.L.C. (Level 3) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services, pursuant to the policy goals set by the New Hampshire Legislature in RSA 374:22-g, effective July 23, 1995.

The Legislature directed the Commission to adopt rules on or before December 31, 1996, to enforce the provisions of RSA 374:22-g. Effective December 4, 1996, the Commission adopted N.H. Admin. Rules, Puc Chapter 1300 which governs the petition of applicants to become competitive local exchange carriers (CLECs).

Pursuant to Puc Chapter 1300, an applicant's petition for certification shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is in the public good.

The Commission Staff (Staff) has reviewed Level 3's petition for compliance with these standards. Staff reports that they have provided all the information required by Puc 1304.02. The information provided supports Level 3's assertion of financial resources, managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g). Staff, therefore, recommends approval of Level 3 as a New Hampshire CLEC.

Level 3 has provided a sworn statement and request for waiver of the surety bond requirement in Puc 1304.02(b) stating that they do not require advance payments or deposits of their customers. Staff recommends granting the waiver.

We find that Level 3 has satisfied the requirements of Puc 1304.01(a)(1) and (2). In addition, we find that certification of Level 3 in its intended service area, Bell Atlantic's current service area, is in the public good, thus meeting the requirement of Puc 1304.01(a)(3). In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further supported by the Telecommunications Act of 1996 (TAct). Because level 3 has satisfied the requirements of Puc 1304.01(a), we will grant certification.

As part of its application, Level 3 agreed to abide by



Bell Atlantic's present and future rates for intraLATA switched access or to charge a lower rate. If, at any point, Level 3 seeks to exceed Bell Atlantic's access rates it shall first contact the Staff to review the proposal. The Commission will monitor access rates as the intraLATA toll and local exchange markets develop. CLECs charging higher access rates than they, in turn, pay Bell Atlantic could inhibit intraLATA toll competition which would call into question Section 253 of the TAct.

Based upon the foregoing, it is hereby

ORDERED NISI, that Level 3's petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Bell Atlantic, is GRANTED, subject, inter alia to the requirements of Puc 1304.03; and it is

FURTHER ORDERED, that request for waiver of the surety bond requirement per Puc 1304.02(b) is granted; and it is

FURTHER ORDERED, that the Petitioner shall cause a copy of this Order Nisi to be published once in a statewide newspaper of general circulation, such publication to be no later than September 9, 1998 and to be documented by affidavit filed with this office on or before September 16, 1998; and it is

FURTHER ORDERED, that all persons interested in responding to this Order Nisi shall submit their comments or file a written request for a hearing on this matter before the Commission no later than September 23, 1998; and it is

FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than September 30, 1998; and it is

FURTHER ORDERED, that this Order Nisi shall be effective October 2, 1998, unless the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that the Petitioner shall file, ten days prior to commencing service, a rate schedule including the name, description and price of each service, with the Commission in accordance with N.H. Admin. Rules, Puc 1304.03(b).

By order of the Public Utilities Commission of New Hampshire this second day of September, 1998.

Douglas L. Patch  
Chairman

Bruce B. Ellsworth  
Commissioner

Susan S. Geiger  
Commissioner

Attested by:

Thomas B. Getz  
Executive Director & Secretary

## **Exhibit 8**

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

JAO  
**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 numbers<sup>1</sup> 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.

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<sup>1</sup> 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] XXXXXXXXXX [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] XXXXXXXXXX [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] XXXXXXXXXX [END PROPRIETARY] requests were for exchanges bordering MetroCast's area. Level 3's remaining [BEGIN PROPRIETARY] XXXXXXXXXX [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 Guidelines<sup>2</sup> 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

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<sup>2</sup> 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](http://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 3'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 Level 3'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**



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.<sup>3</sup> 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.<sup>4</sup> In that order, the FCC requires LECs to port numbers for customers who

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<sup>3</sup> *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).

<sup>4</sup> *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.