

July 18, 2008

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, NW  
Washington, DC 20554

Re: Emergency Petition of Level 3 Communications, LLC, for Assignment of  
Additional Telephone Numbers in Area Code 603, and Request for  
Special Temporary Authorization of Thousand-Blocks in Area Code 603

Dear Ms. Shaffer:

On behalf of Level 3 Communications, LLC ("Level 3"), filed today with this letter are Level 3's Request for Special Temporary Authorization of Thousand-Blocks in Area Code 603 ("STA Request") and Emergency Petition of Level 3 Communications, LLC, for Assignment of Additional Telephone Numbers in Area Code 603 ("Emergency Petition"). Enclosed are an original and six copies of the STA Request and Emergency Petition, both redacted and unredacted versions.

Level 3 requests that the unredacted versions of the attached documents, which contain Level 3 proprietary commercial information, be withheld from public inspection pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459.

**1. Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))**

Level 3 seeks confidential treatment for the specific information designated as confidential in the unredacted version of the STA Request, Emergency Petition and accompanying exhibits. These submissions contain proprietary information about Level 3's operations and resources that Level 3 does not routinely make public. Public release of the submitted information could also cause competitive harm by revealing specific information about Level 3's telephone number resources in New Hampshire, where Level 3 has or will be exhausting its supply of numbers, and the ramifications of Level 3's shortage of telephone number resources in particular rate centers in New Hampshire. The

information also contains Level 3's projections of how fast it expects to use telephone numbers, should it gain access to additional numbers. This information could be used by Level 3's competitors to its commercial detriment.

**2. Description of Circumstances Giving Rise to the Submission (Section 0.459(b)(2))**

Level 3 has applied to NANPA for the assignment of additional telephone numbers, and has been unjustly and unreasonably denied additional numbers. As described in the attached Petition, in the past Level 3 has submitted information related to its shortfall of numbering resources in New Hampshire as part of its applications for growth codes to NANPA. These NANPA applications are subject to confidential treatment in the ordinary course. In addition, the New Hampshire Public Utilities Commission has accorded confidential treatment to some information submitted in proceedings in that state. Level 3 now submits similar information, including information as to the extent and location of Level 3's shortages of telephone numbers and the effects on Level 3 and its actual and potential customers, as a necessary part of its STA Request and Emergency Petition and asks that here, as in the context of submissions to NANPA and the state commission, the Commission protect from public disclosure the limited portions of these documents identified as confidential and proprietary.

**3. Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))**

The attached documents contain Level 3 proprietary commercial information, including the particular rate centers in New Hampshire for which Level 3 has a shortfall of telephone numbers and accordingly is at or near the point of being unable to serve customers. The attached documents also contain Level 3's projections of how fast it expects to require additional telephone numbers to serve customers – information it is required by FCC rules and numbering guidelines to submit to NANPA with its application for additional telephone numbers. Therefore, the attached documents reveal information concerning Level 3's resources and operations that are commercially sensitive in nature.

**4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))**

The attached information concerns telecommunications services that are subject to rigorous competition. Level 3 is certified in New Hampshire as a facilities-based telecommunications carrier with an international network optimized for Internet Protocol technology. 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 and enhanced service providers that use Level 3's telecommunications services to provide their own telecommunications, interconnected VoIP and/or

information services. Level 3 is subject to competition in the New Hampshire market for provision of these services.

**5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))**

If such information were disclosed, Level 3's competitors would learn to what extent Level 3's numbering shortfall is hampering Level 3's ability to provide services to new and existing customers, as well as Level 3's estimates of how fast it could gain lines if the artificially imposed shortage on Level 3's numbers were alleviated. When Level 3 cannot meet a customer's needs because Level 3 lacks numbers, the customer turns to one of Level 3's competitors to procure its service. Competitors might also seek out these customers if the specific confidential information contained in the attached documents is made available to the public.

**6. Identification of Any Measures Taken by Level 3 to Prevent Unauthorized Disclosure (Section 0.459(b)(6))**

Level 3 has never distributed to the public or its competitors the attached information regarding specific requests for numbering resources. To the extent information was submitted to NANPA, NANPA treats such information as confidential. Likewise, to the extent such information was provided to the New Hampshire Public Utilities Commission, such information was provided pursuant to requests for confidential treatment. Throughout the STA Request and Emergency Petition, Level 3 has identified confidential and proprietary information with clearly marked, bold-faced, capital type, "BEGIN CONFIDENTIAL" and "END CONFIDENTIAL" to designate the particular information, and has marked each page of the unredacted versions as "CONFIDENTIAL – NOT FOR PUBLIC INSPECTION."

**7. Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))**

Level 3 has never distributed to the public or its competitors the attached information regarding specific requests for numbering resources. Level 3 has previously submitted information of this type to the New Hampshire PUC and to NANPA confidentially. Information regarding numbering resources and requests is closely-guarded information that is not disclosed to third parties.

**8. Justification of Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (Section 0.459(b)(8))**

Level 3 requests that the information marked as confidential throughout the STA Request and Emergency Petition remain undisclosed for a period of 5 years from the date of this confidentiality request. We believe that after 5 years, because of the ongoing

changes in Level 3's numbering inventory, the sensitivity of this information will become less relevant.

**9. Other Information that Level 3 Believes May Be Useful in Assessing Whether its Request for Confidentiality Should Be Granted (Section 0.459(b)(9))**

As noted in the attached Emergency Petition, Level 3 is seeking relief from the Commission after exhausting other resources with NANPA and the New Hampshire Public Utilities Commission. In those venues, confidential treatment has already been accorded to the types of information that Level 3 has redacted here. If this information is made available to the public, Level 3 could be irreparably harmed because it is already at a competitive disadvantage with other providers who have ample telephone numbers in rate centers in New Hampshire. Revealing the specific details of Level 3's number shortage could put the company at an even greater disadvantage.

For the reasons stated above, Level 3 believes that the attached unredacted versions of the STA Request and Emergency Petition should be withheld from public inspection. Should you have any questions regarding this confidentiality request, please contact me by phone at (202) 730-1320 or by email at [jnakahata@harriswiltshire.com](mailto:jnakahata@harriswiltshire.com).

Respectfully submitted,

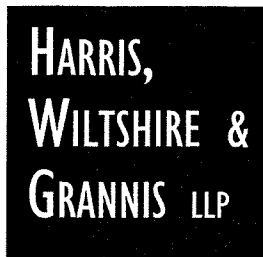


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ATTORNEYS AT LAW

July 18, 2008

Ms. Dana Shaffer  
Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, NW  
Washington, DC 20554

Re: Request for Special Temporary Authorization of Thousand-Blocks in Area  
Code 603

Dear Ms. Shaffer:

Pursuant to the Commission's plenary authority over numbering administration<sup>1</sup> and its delegation to the Wireline Competition Bureau of authority to resolve numbering disputes,<sup>2</sup> Level 3 Communications, LLC ("Level 3") requests that the Wireline Competition Bureau (the "Bureau") grant Level 3 a Special Temporary Authorization of thousand-blocks in area code 603. Today, Level 3 filed an Emergency Petition for the Assignment of Additional Telephone Numbers in Area Code 603 ("Petition"). Because of NANPA's unlawful refusal – at the behest of the New Hampshire Public Utilities Commission ("PUC") – to grant Level 3 additional thousand blocks, **[\*\*BEGIN CONFIDENTIAL\*\*]**

**[\*\*END CONFIDENTIAL\*\*]** Unless this Special Temporary Authorization is granted, Level 3 will be unable to serve additional customers in many rate centers in New Hampshire during the pendency of that Petition.

Accordingly, Level 3 requests that the Bureau direct the North American Numbering Plan Administrator ("NANPA") to assign and release immediately to Level 3

<sup>1</sup> See 47 U.S.C. §251(e); see also 47 C.F.R. §§ 52.3, 52.15 et seq.

<sup>2</sup> See *In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois, Declaratory Ruling and Order*, 10 FCC Rcd 4596, 4612 ¶ 36 (1995) (authorizing the then-Common Carrier Bureau to "act for the Commission under delegated authority in resolving future number resource allocation disputes").

a thousand block of growth codes in each of the rate centers listed in Appendix A where exhaust has been reached or is imminent. In each of these rate centers, Level 3's inventory exceeds 90% utilization and is less than three months from exhaust – far above the industry guidelines for additional growth codes. Indeed, many of these rate centers exceed 99% utilization (meaning fewer than *ten* numbers remain for each thousand block). Level 3 also asks the Bureau to direct NANPA to grant Level 3 additional codes that reach this 90% utilization and three months to exhaust threshold during the pendency of this proceeding. This Special Temporary Authorization would be without prejudice to the Commission's consideration of the merits and would be subject to revocation or suspension by the Commission at any time.

As further documented in its Petition, Level 3 meets the basic qualifications for growth codes in each of the rate centers in Appendix A. Specifically:

- Level 3 is certified by the New Hampshire Public Utilities Commission to provide local exchange service in each of these exchanges. Level 3 has a certificate of public convenience and necessity to provide local exchange services in all of the former Bell Atlantic exchanges in New Hampshire.<sup>3</sup>
- Level 3 is providing local exchange service today in each of these rate centers – in particular Direct Inward Dial and Direct Outward Dial services – and will use these numbers to provide local exchange services.<sup>4</sup>
- Level 3 exceeds 75% utilization of its numbers in each of these rate centers. For the rate centers listed in Appendix A, Level 3 exceeds 90% utilization.<sup>5</sup>
- Level 3 projects number exhaust in each of these rate centers within 6 months. For the rate centers listed in Appendix A, Level 3 projects exhaust within three months.<sup>6</sup>

Level 3 has established a *prima facie* case for assignment of additional growth codes.

Level 3 has exhausted its remedies and has no other avenues to obtain additional growth codes in these rate centers. In September 2005, April to August 2007, and again in May 2008, Level 3 applied to NANPA for growth codes. Upon the instructions of the New Hampshire PUC, NANPA denied all of Level 3's applications on the patently false grounds that Level 3 was not certified in the rate centers for which it sought numbers. In accordance with industry guidelines, on September 12, 2007, Level 3 appealed NANPA's denial to the New Hampshire PUC and sought a safety valve request for additional growth codes. Ignoring industry guidelines that call for "Resolution by the state commission . . . in an expeditious manner,"<sup>7</sup> the New Hampshire PUC has failed to act on Level 3's appeal and safety valve request for *ten* months. In the meantime, Level 3 has reclaimed numbers from its existing customers. Level 3 has used those numbers to fill additional orders for service, and those numbers are included in Level 3's utilization

<sup>3</sup> See Petition, Exhibit 7.

<sup>4</sup> See Petition, Exhibit 3.

<sup>5</sup> See also Petition, Exhibit 2.

<sup>6</sup> See also Petition, Exhibit 5.

<sup>7</sup> Central Office Code (NXX) Assignment Guidelines (COCAG) Final Document, ATIS Standard § 12.1(d) (Jan. 18, 2008) (available at [www.atis.org/INC/incguides.asp](http://www.atis.org/INC/incguides.asp)).

levels and months-to-exhaust estimates. Level 3's efficient use of its existing inventory will no longer suffice.

Accordingly, pursuant to industry guidelines and the Commission's orders, Level 3 files its Petition today to redress NANPA's denials and the New Hampshire PUC's failure to act, and to obtain non-discriminatory access to numbers.<sup>8</sup> In the *Pennsylvania Numbering Order*, the Commission articulated its standard for extraordinary relief in the form of an immediate release of numbers.<sup>9</sup> The Commission directed 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 with the numbering administrator to ensure that the carriers have access to codes.<sup>10</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>11</sup> Subsequently, the Bureau applied the criteria set forth in the *Pennsylvania Numbering Order* and directed NANPA to assign and release numbering codes.<sup>12</sup> In those cases carriers had *nearly* reached the point of being unable to serve customers in some rate centers.<sup>13</sup> Level 3 is past that point. [**\*\*BEGIN**

<sup>8</sup> *Id.* § 12.2 ("Safety Valve Process") ("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>9</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).

<sup>10</sup> See *Pennsylvania Numbering Order*, 13 FCC Rcd at 19039 ¶ 49.

<sup>11</sup> See *id.* at 19027 ¶ 26.

<sup>12</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>13</sup> See *id.*

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

Grant of this STA will not harm third parties. The 603 area code is nowhere near exhaust. The latest Number Resource Utilization Forecast (NRUF) report shows that 3,226,000 million numbers – or 47.8 percent of the numbers – are still available in the 603 area code.<sup>14</sup> NANPA projects that the 603 area code will not reach exhaustion until the first quarter 2011.<sup>15</sup> In addition, thousands-block number pooling has been implemented in each of the rate centers for which Level 3 seeks growth codes. Granting Level 3's request for an STA, therefore, will not place the 603 area code in a jeopardy situation.

Level 3 believes its Emergency Petition should be granted in its entirety immediately. Nonetheless, should the Commission seek comment on Level 3's Petition, Level 3's customers should not be denied their choice of service provider because of a lack of numbers during the pendency of the Petition. Immediate grant of this STA, without prejudice to the merits of the Petition and subject to modification or revocation by the Commission at any time, serves the two primary goals of the Commission's numbering policy – 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 marketplace."<sup>16</sup>

Level 3 thus respectfully asks the Bureau to grant this STA to allow Level 3 to continue to add lines in affected New Hampshire rate centers during the pendency of its Petition. Should you have any questions regarding this request, please contact me by phone at (202) 730-1320 or by email at [jnakahata@harriswiltshire.com](mailto:jnakahata@harriswiltshire.com).

<sup>14</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>15</sup> 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%202008%20NANP%20Exhaust%20Analysis.pdf)).

<sup>16</sup> See *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, 7577 ¶ 1 (2000).



Respectfully submitted,



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