

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Administration of the)	CC Docket No. 92-237
North American Numbering Plan)	
)	
Request for Special Temporary)	WC Docket No. 08-154
Authorization of Thousands-Blocks)	
In Area Code 603)	

ORDER

Adopted: August 27, 2010

Released: August 27, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. This order addresses a request by Level 3 Communications, LLC (Level 3) for Special Temporary Authorization (STA) to receive numbering resources in the 603 numbering plan area (NPA) in the State of New Hampshire.¹ Level 3 requests this relief pending resolution of an underlying petition for assignment of telephone numbers in Area Code 603 and for preemption of New Hampshire's actions in denying Level 3 resources in that state.² In this Order, we grant in part Level 3's STA Request and direct the National Thousands-Block Pooling Administrator (PA) to assign numbering resources to Level 3 in the affected New Hampshire rate centers that have more than five blocks of numbers available.

II. BACKGROUND

2. On July 18, 2008, Level 3 filed a petition with the Federal Communications Commission (Commission) that, in part, requests that the actions of New Hampshire in the denial of Level 3's request for numbering resources be preempted as a barrier prohibiting Level 3 from providing telecommunications services, in violation of the Communications Act of 1934, as amended.³ On the same day, pending resolution of its petition, Level 3 filed a request with the Wireline Competition Bureau

¹ Letter from John T. Nakahata, Counsel for Level 3 Communications, LLC to Ms. Dana Shaffer, Chief, Wireline Competition Bureau, FCC, dated July 18, 2008 (Level 3 STA Request).

² Emergency Petition of Level 3 Communications, LLC, for the Assignment of Additional Telephone Numbers in Area Code 603, and for the Preemption of the Actions of the New Hampshire Public Utilities Commission Pursuant to Section 253 of the Communications Act of 1934, WC Docket 08-154 (filed July 18, 2008) (Level 3 Petition).

³ On July 24, 2008, the Commission sought comment on the Level 3 Petition. *See Pleading Cycle Established for Comments on Level 3's Emergency Petition for Assignment of Additional Telephone Numbers in Area Code 603*, WC Docket No. 08-154, Public Notice, DA 08-1732, 23 FCC Rcd 11207 (2008). The New Hampshire Public Utilities Commission (New Hampshire PUC), the National Thousands-Block Pooling Administrator (PA), and the North American Numbering Plan Administrator (NANPA) filed comments. All commenters filed one set of comments that addressed both the Level 3 Petition and the Level 3 STA Request. Level 3 filed Reply Comments.

(Bureau) seeking the immediate release of a thousands-block of growth codes in various rate centers in New Hampshire where it has exhausted or will imminently exhaust its numbering resources.⁴ Specifically, Level 3 seeks relief in each of the rate centers where its numbering inventory exceeds 90 percent utilization and is less than three months from exhaust.⁵ Level 3 also requests that the Bureau direct the North American Numbering Plan Administrator (NANPA) to grant additional codes in rate centers that will reach 90 percent utilization and exhaust within three months during the pendency of its petition.⁶

3. Level 3 argues in its STA Request that its underlying petition demonstrates that it meets the basic requirements for obtaining additional numbering resources in New Hampshire, including documentation that it is certified and providing local exchange service through direct inward dial and direct outward dial services.⁷ The New Hampshire PUC, however, contends that there is no evidence that Level 3 is offering the local exchange service it is certified to provide.⁸ In particular, the New Hampshire PUC argues that Level 3 has not established that the Internet service providers it serves are located in New Hampshire and that Level 3 is unable to provide information regarding the number utilization of its customers.⁹ In the event Level 3's Petition is denied, Level 3 has outlined a process to reclaim numbering resources from any set of end users that the Commission declares to be ineligible to receive such resources.¹⁰

III. DISCUSSION

4. In determining whether to grant an STA, the Bureau examines whether the proposed action will serve the public interest, convenience, and necessity.¹¹ In its STA Request, Level 3 asserts that it will be unable to serve additional customers in New Hampshire rate centers if its STA Request is denied.¹² Level 3 indicates that the efficient use of its current inventory of numbers by reclaiming resources from

⁴ The Bureau sought comment on the Level 3 STA Request on July 24, 2008. See *Wireline Competition Bureau Seeks Comment on Level 3's Request for Special Temporary Authorization of Thousand-Block Codes in Area Code 603*, WC Docket No. 08-154, Public Notice, DA 08-1731, 23 FCC Rcd 11205 (2008). As previously noted, the New Hampshire PUC, the NANPA, and the PA filed comments, and Level 3 filed reply comments. In their comments, the numbering administrators clarify that Level 3's STA request and its emergency petition should identify the PA, not the NANPA, as the entity that denied Level 3's applications for numbering resources and that will assign resources to Level 3.

⁵ Level 3 STA Request at 1-2.

⁶ *Id.* at 2; see also Level 3 Reply Comments at 2 (indicating that its request involves the PA, not the NANPA).

⁷ Level 3 STA Request at 2.

⁸ New Hampshire PUC Comments at 5.

⁹ *Id.* at 6.

¹⁰ Letter from John T. Nakahata, Counsel to Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, dated December 19, 2008.

¹¹ See *Accounting Safeguards Under the Telecommunications Act of 1996*, Order, 16 FCC Rcd 17969, 17970, para. 3 (CCB 2001) (applying STA standards to a request by Verizon Communications, Inc. to repair damage to telecommunications facilities in New York City after September 11, 2001, implicating section 272 and implementing rules); see also *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Order, 16 FCC Rcd 15957, 15958, para. 3 (CCB 2001) (addressing standard for granting STAs); 47 U.S.C. §§ 154(i), 303(r).

¹² Level 3 STA Request at 1.

existing customers to fill additional orders for service will no longer suffice to meet its needs.¹³ Level 3 states that it has exhausted all its remedies to obtain additional numbers in New Hampshire. It concludes that the grant of an STA will serve two primary goals of the Commission's numbering policy -- the efficient use of the limited North American Numbering Plan (NANP) numbering resources and the availability of numbering resources for all carriers to compete in the telecommunications marketplace.¹⁴ In a subsequent letter to the Bureau, Level 3 provides another basis for granting its request: its inability to fulfill requests from Video Relay Service (VRS) providers in New Hampshire due to its own inability to obtain numbering resources in that state.¹⁵

5. The Bureau has previously granted parties access to numbering resources that were initially denied by a numbering administrator for area code relief purposes.¹⁶ In so doing, the Bureau has exercised its delegated authority to resolve number resource allocation disputes.¹⁷ Level 3 has demonstrated that it is very close to, or at, exhaust of numbering resources in various New Hampshire rate centers and that it has exhausted all of its remedies to obtain additional resources. In addition, Level 3 has tailored a conservative request that only affects rate centers in which it has over 90 percent utilization and is within three months from exhaust. Under the Commission's rules, a carrier is eligible for growth codes once it reaches 75 percent utilization, and it may retain up to a six-month inventory of telephone numbers.¹⁸ Finally, Level 3 has provided a reclamation plan, in the event Level 3 obtains numbers from the grant of its STA request but, ultimately, the Commission denies its underlying petition.¹⁹

6. Most of the issues raised in the Level 3 Petition are broad policy issues not properly addressed in the context of a request for numbering resources in a single NPA. Moreover the Commission need not address these broader issues at this time to resolve Level 3's STA request. We believe that a denial of additional numbering resources in this case could pose a barrier to competition. A customer desiring service from Level 3 may have to turn to another carrier if Level 3 lacks the numbering resources to provide service, thus denying that customer its choice of providers. We are particularly concerned that VRS providers, under a Commission mandate to provide ten-digit telephone numbers that are linked to the NANP, may have been affected by this lack of choice. For example, Sorenson Communications, Inc., a VRS provider and numbering partner with Level 3, has indicated that the virtual exhaust of Level 3's numbering resources in New Hampshire adds to the difficulties it faces in the provision of telephone numbers for VRS users in that state.²⁰ For these reasons, we find that there is a

¹³ *Id.* at 2.

¹⁴ *Id.* at 4.

¹⁵ Letter from John T. Nakahata, Counsel to Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 08-154, dated Dec. 19, 2008 (Level 3 Dec. Letter).

¹⁶ See *The State of New York Department of Public Service Request for the Release of A New Area Code to Provide Relief for the 716 Numbering Plan Area*, Memorandum Opinion and Order, CC Docket No. 96-98, NSD File No. L-00-161; see also, Letter from Lawrence E. Strickling, Chief, Common Carrier Bureau, to Lawrence G. Malone, General Counsel, New York State Department of Public Service, DA 99-2696, dated December 3, 1999.

¹⁷ *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, Declaratory Ruling and Order, 10 FCC Rcd 4596 (1995).

¹⁸ 47 C.F.R. § 52.15(g)(3)(iii), (h).

¹⁹ Letter from John T. Nakahata, Counsel to Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, FCC, dated December 19, 2008.

²⁰ See *Sorenson Communications, Inc. Petition for Declaratory Ruling or Limited Waiver of the Commission's Rules*, CG Docket No. 03-123, WC Docket No. 05-196 at n.26 (filed Apr. 13, 2009) (stating that Level 3 has exhausted virtually all of its number resources in New Hampshire and the New Hampshire PUC has refused to provision new growth codes); see also *Level 3 Comments in Support of Sorenson's Petition for Declaratory Ruling*

(continued....)

compelling public interest in granting Level 3 the numbering resources needed to compete in the New Hampshire telecommunications market and to serve VRS customers during the pendency of its petition.

7. Accordingly, we grant Level 3 an STA for numbering resources in certain New Hampshire rate centers, subject to revocation or suspension by the Commission at any time should we determine that numbering resources are being used inefficiently or improperly. Specifically, we direct the PA to assign to Level 3 a single thousands-block of numbers in New Hampshire rate centers that currently have more than five thousands-blocks of numbers available and where Level 3 has been denied such resources. We believe that this result balances the competitive disadvantage that Level 3 has in those rate centers with the New Hampshire PUC's concerns about Level 3's provision of local exchange service and premature exhaust of numbering resources in the 603 NPA. This result will also make more numbering resources available for VRS providers served by Level 3 in New Hampshire and, in turn, for VRS customers in that state.

8. The action we take today is not intended to prejudge any future course of action by the Commission with respect to the larger policy issues raised in the underlying Level 3 Petition. This STA will remain in effect pending resolution of those issues. Should the resolution of those issues result in the need for the PA to cease providing to, or reclaim numbering resources from, Level 3, the Bureau will direct the administrator accordingly.

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251(e) and section 0.91 of the Commission's rules, 47 C.F.R. § 0.91, Level 3's Request for Special Temporary Authorization to obtain numbering resources in numbering plan area 603 IS GRANTED, to the extent set forth herein, and otherwise IS DENIED. We direct the National Thousands-Block Pooling Administrator to assign numbering resources to Level 3 as set forth in this Order.

10. IT IS ALSO ORDERED that the Special Temporary Authorization granted in this order shall remain in effect until such time as the Commission resolves the Level 3 Petition.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief, Wireline Competition Bureau

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or Limited Waiver of the Commission's Rules, CG Docket No. 03-123, WC Docket No. 05-196 at 2-3, n.2 (discussing its Emergency Petition and STA Request to obtain numbering resources in New Hampshire).