

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

In the Matter of	)	File No.: EB-08-SE-548
	)	
Level 3 Communications, LLC	)	Acct. No.: 201232100027
	)	
	)	FRN: 0003723822
	)	
	)	

**ORDER**

**Adopted: June 14, 2012**

**Released: June 14, 2012**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission and Level 3 Communications, LLC (Level 3). The Consent Decree resolves and terminates the Bureau's investigation into Level 3's compliance with Section 4.9 of the Commission's rules (Rules)<sup>1</sup> pertaining to the reporting of network outages.

2. The Bureau and Level 3 have negotiated a Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of new material evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether Level 3 possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and Sections 0.111 and 0.311 of the Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

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<sup>1</sup> 47 C.F.R. § 4.9.

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Gregory T. Diamond, Corporate Counsel, Level 3 Communications, LLC, 1025 Eldorado Boulevard, Broomfield, CO 80021, as well as to Frank Lamancusa, Esq., counsel for Level 3 Communications, LLC, Bingham McCutchen LLP, 2020 K Street, N.W., Washington, DC 20006-1806.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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**CONSENT DECREE**

8. The Enforcement Bureau of the Federal Communications Commission and Level 3 Communications, LLC, by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Level 3 Communications, LLC violated Section 4.9 of the Commission's Rules, 47 C.F.R. § 4.9, regarding the reporting of network outages.

**I. DEFINITIONS**

9. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 9.
  - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order.
  - (g) "Investigation" means the investigation commenced by the Bureau's June 24, 2008 letter of inquiry<sup>1</sup> regarding Level 3's compliance with the reporting requirements under Section 4.9 of the Rules, 47 C.F.R. § 4.9.
  - (h) "Level 3" or the "Company" means Level 3 Communications, LLC and its subsidiaries, affiliates, predecessors-in-interest and successors-in-interest.
  - (i) "Parties" means Level 3 and the Bureau, and each is a "Party."

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<sup>1</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to William P. Hunt III, Vice President, Public Policy, Level 3 Communications, LLC (June 24, 2008).

- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

## II. BACKGROUND

10. Pursuant to Section 4.9(f) of the Rules, wireline service providers must report to the Commission an outage of at least 30 minutes duration that: (1) potentially affects at least 900,000 user minutes<sup>2</sup> of either telephony or paging; (2) affects at least 1,350 DS3 minutes;<sup>3</sup> (3) potentially affects any special offices and facilities;<sup>4</sup> or (4) potentially affects a 911 special facility.<sup>5</sup> Upon discovery of such an outage, wireline service providers must file an electronic Notification within 120 minutes, an Initial Communications Outage Report within 72 hours, and a Final Communications Outage Report within 30 days.<sup>6</sup>

11. On June 24, 2008, the Bureau issued a letter of inquiry (LOI) to Level 3.<sup>7</sup> The LOI directed Level 3 to submit a sworn written response to a series of questions relating to Level 3’s compliance with the Commission’s network outage reporting rules. Level 3 responded to the LOI on July 24, 2008 (LOI Response).<sup>8</sup> Level 3 supplemented its LOI Response on September 23, 2008.<sup>9</sup> The Bureau issued a follow-up letter of inquiry to Level 3 on November 17, 2009,<sup>10</sup> to which Level 3 responded on January 8, 2010.<sup>11</sup> Level 3 supplemented that response on May 4, 2011.<sup>12</sup> Level 3 and the Bureau executed tolling agreements to toll the statute of limitations.<sup>13</sup>

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<sup>2</sup> “User minutes” are defined as “[a]ssigned telephone number minutes ... for telephony and for those paging networks in which each individual user is assigned a telephone number” or “the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage for all other forms of communication.” 47 C.F.R. § 4.7(e).

<sup>3</sup> “DS3 minutes” are defined as “the mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of previously operating DS3 circuits that were affected by the outage.” 47 C.F.R. § 4.7(d).

<sup>4</sup> “Special offices and facilities” include major military installations, key government facilities, nuclear power plants, and certain airports. 47 C.F.R. § 4.5(b)-(d).

<sup>5</sup> See 47 C.F.R. § 4.5(e).

<sup>6</sup> See 47 C.F.R. § 4.9(f).

<sup>7</sup> See *supra* n. 1.

<sup>8</sup> Letter from William P. Hunt III, Vice President, Public Policy, Level 3 Communications, LLC, to JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (July 24, 2008).

<sup>9</sup> Letter from William P. Hunt III, Vice President, Public Policy, Level 3 Communications, LLC, to JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 23, 2008).

<sup>10</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to William P. Hunt III, Vice President, Public Policy, Level 3 Communications, LLC (Nov. 17, 2009).

<sup>11</sup> Letter from William P. Hunt III, Vice President, Public Policy, Level 3 Communications, LLC, to JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 8, 2010).

<sup>12</sup> Letter from Frank G. Lamancusa, Counsel for Level 3 Communications, LLC, to Ricardo Durham, Acting Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (May 4, 2011).

<sup>13</sup> See, e.g., Tolling Agreement Extension, File No. EB-08-SE-548, executed by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Gregory T. Diamond, Regulatory Counsel, Level 3 Communications, LLC (Sept. 15, 2011).

### III. TERMS OF AGREEMENT

12. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

13. **Jurisdiction.** Level 3 agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

14. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

15. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Level 3 agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against Level 3 concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Level 3 with respect to Level 3's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

16. **Compliance Plan.** In response to the Bureau's Investigation, Level 3 represents that it initiated certain remedial measures and, for purposes of settling the matters herein, agrees to maintain a Compliance Plan intended to ensure future compliance with the Act, the Rules, and the Commission's orders. The Compliance Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Level 3 shall designate a Compliance Officer within thirty (30) days of the Effective Date. The Compliance Officer shall be responsible for administering the Compliance Plan and shall be the senior corporate manager whose business unit is most directly responsible for reporting network outages to the FCC.
- (b) **Compliance Process.**
  - i. Level 3 certifies that, since the onset of the Investigation, it has implemented changes to improve the accuracy and timeliness of its outage reporting process. Specifically, Level 3 has consolidated the responsibilities for reporting most wireline and wireless service outages into a single operations center and implemented new report tracking tools that employ automated notifications, as well as escalations and reminders. Additionally, Level 3 has implemented a periodic review (at least monthly and sometimes more frequently) with key stakeholders to drive further improvements in the reporting process.
  - ii. Level 3 agrees to maintain these outage reporting process measures for the duration of the Compliance Plan and shall review and revise these measures as appropriate, including in the event of any changes in the network outage reporting Rules.

- (c) **Compliance Training Program.** Level 3 certifies that, as a result of this Investigation, it has implemented a network outage reporting training program. Level 3 shall maintain for the duration of this Compliance Plan a Compliance Training Program as detailed below.
- i. Level 3's Compliance Training Program shall address, at a minimum, the Rules governing the reporting of network outages, the information and calculations necessary to determine whether an outage is reportable under the Rules, and the time periods during which notifications and reports of reportable outages must be submitted to the Commission. Level 3's Compliance Training Program shall also address the methods and procedures adopted by Level 3 to identify and report those network outages that meet the Commission's reporting criteria, including network outage events related to unprotected DS3 circuits. The Compliance Training Program shall also include information on the potential internal and regulatory consequences of failing to comply with the Commission's outage reporting requirements and/or Level 3's methods and procedures.
  - ii. Within sixty (60) days of the Effective Date, Level 3 shall ensure that training and compliance materials regarding the Commission's network outage reporting requirements are provided to all of its employees who are responsible for gathering and/or analyzing information regarding Level 3's network outages, entering that information into any Level 3 database and/or record that forms the basis of Level 3's reporting of network outages to the Commission, or compiling and/or submitting Level 3's outage reports to the Commission, as well as any managers overseeing such employees. This training shall be provided on an annual basis. Additionally, Level 3 shall update the Compliance Training Program as necessary and appropriate, and in the event of changes and/or additions to Section 4.9 of the Rules, shall update the Compliance Training Program within fifteen (15) days after the effective date of any such change or addition. Level 3 will also train new and reassigned employees responsible for these activities within thirty (30) days of their assuming these responsibilities.
- (d) **Outage Reporting.** Beginning sixty (60) calendar days after the Effective Date and thereafter, Level 3 shall include in any network outage report filed with the Commission the date and time that Level 3 discovered the outage was reportable using the following two separate fields: (1) Date Outage Determined Reportable and (2) Local Time Outage Determined Reportable (24 hr clock (nnnn)).
- (e) **Compliance Report.** Level 3 shall file Compliance Reports with the Bureau six (6) months after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.
- i. Each Compliance Report shall affirm that Level 3:
    1. has established and implemented the Compliance Plan and operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with Section 4.9 of the Rules, together with an accompanying statement explaining the basis for the assertion;
    2. has been utilizing these procedures for the entire term of the Compliance Plan;
    3. has disclosed in the Compliance Report any known instances of non-compliance with this Compliance Plan discovered during the reporting period;
    4. has taken steps to identify any late-filed outage reports; and
    5. has addressed any instances of late-filed outage reports and taken steps to remedy the cause of the late filings.

- ii. Each Compliance Report will be supported by the declaration of the Compliance Officer as an agent of and on behalf of Level 3 with personal knowledge of the representations provided in the report, verifying the truth and accuracy of the information. The declaration will comply with Section 1.16 and be subscribed to as true under penalty of perjury in substantially the same form set forth therein.
  - iii. Any instance of non-compliance with the Compliance Plan disclosed in the report shall provide:
    1. a detailed explanation of the non-compliance;
    2. the steps Level 3 has taken to remedy the non-compliance and ensure future compliance; and
    3. the schedule on which the proposed remedial actions will be taken.
- (f) **Filing.** All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Kevin M. Pittman at Kevin.Pittman@fcc.gov and JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.
- (g) **Progress Assessment.** Beginning on the Effective Date, Level 3 shall, at the request of the Bureau, meet with the Bureau once each 60-day period during the term of the Compliance Plan to discuss Level 3's adherence to the Compliance Plan and its performance under the Part 4 Rules. Level 3 agrees to provide the Bureau with information the Bureau requests concerning these topics.
- (h) **Termination.** The provisions of this paragraph shall remain in effect for two (2) years from the Effective Date.

17. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against Level 3 or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Level 3 with the Act, the Rules, or Commission orders.

18. **Voluntary Contribution.** Level 3 agrees that it will make a voluntary contribution to the United States Treasury in the amount of sixty-eight thousand dollars (\$68,000). The contribution will be made within thirty (30) calendar days after the Effective Date. Payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. Regardless of the form of payment, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Level 3 will also send electronic notification on the date said payment is made to JoAnn.Lucanik@fcc.gov, Kevin.Pittman@fcc.gov, and Sam.Peoples@fcc.gov.

19. **Waivers.** Level 3 waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent

Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. Level 3 shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Level 3 nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Level 3 shall waive any statutory right to a trial *de novo*. Level 3 hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

20. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Level 3 does not expressly consent) that provision will be superseded by such Rule or Commission order.

22. **Successors and Assigns.** Level 3 agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

23. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act, the Rules, or Commission orders and that by agreeing to this Consent Decree Level 3 does not admit or deny noncompliance, violation or liability for violating the Act or rules in connection with the matters that are the subject of this Consent Decree.

24. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

25. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

26. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

27. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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P. Michele Ellison  
Chief  
Enforcement Bureau

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Date

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Michael Mooney  
General Counsel, Regulatory Policy  
Level 3 Communications, LLC

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Date