

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

*In the Matter of the Joint Applications of Broadwing
Communications, LLC (U5525C); Global Crossing
Local Services, Inc. (U5685C); Global Crossing
Telecommunications, Inc. (U5005C); IP Networks,
Inc. (U6362C); Level 3 Communications, LLC
(U-5941-C); Level 3 Telecom of California, LP
(U5358C); WilTel Communications, LLC (U6146C);
and Level 3 Communications, Inc., a Delaware
Corporation; and CenturyLink, Inc., a Louisiana
Corporation, for Approval of Transfer of Control of
the Level 3 Operating Entities Pursuant to
California Public Utilities Code Section 854(a)*

APPLICATION 17-03-016
(filed March 22, 2017)

COMMENTS AND REQUEST FOR PARTY STATUS

Telnyx LLC (“Telnyx”) requests that the Public Utilities Commission of the State of California (the “Commission”) grant it party status in this proceeding. It submits the following information regarding the effects of the CenturyLink/Level 3 merger under consideration in this proceeding (the “Proposed Transaction”) on wholesale communications markets in California and throughout the nation, and requests that the Commission condition its approval of the Proposed Transaction on the captioned joint applicants’ (the “Joint Applicants”) agreement to implement certain steps to protect wholesale competition, as set forth below.

I. **Introduction**

Section 854(a) of the Public Utilities Code requires the Commission to determine that a proposed acquisition or merger is in the public interest. The Commission is required pursuant to § 854(b)(3) to consider whether this transaction will have an adverse impact on competition in the California marketplace and whether the transaction raises

antitrust concerns, because “antitrust concepts are intimately involved in a determination of what action is in the public interest, and therefore the Commission is obliged to weigh antitrust policy.”¹ Due to the concerns raised by this Proposed Transaction with regard to competition in wholesale communications markets, the Commission should require the Joint Applicants to submit more information demonstrating the California-specific effects in connection with its request for an “advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.” Section 854(b)(3). These steps are necessary so that the Commission can assess whether the Proposed Transaction is in the public interest.

In considering whether to approve the transaction, the Commission is not limited to traditional antitrust principles, but rather also considers the broader public interest. Recent proceedings at the Federal Communications Commission (“FCC”) and before the Commission demonstrate the critical need for an increase in the number of competitors for communications services, particularly those using new technologies.² Therefore, the Commission and the Attorney General must critically assess the impact of the Proposed Transaction in that market.

II. Background

Telnyx provides internet protocol communications services, including interconnected VoIP services, to next generation service providers.

¹ Northern California Power Agency v. Public Utilities Commission (1971) 5 Cal.3d 370, 377.

² See, e.g., *Numbering Policies for Modern Communications*, Report and Order, rel. June 22, 2015 (Docket Nos. WC 13-97, WC 04-36, WC 07-243, CC 95-116, CC 01-92, WC 10-90, and CC 99-200) (the “Modern Numbering Order”).

In 2016, Telnyx received authorization to obtain numbering resources as a provider of interconnected VoIP services in *Telnyx LLC Authorization to Obtain Numbering Resources Pursuant to Section 52.15(g) of the Commission's Rules*, WC Docket No. 16-172 (2016). Telnyx has requested and received numbering resources in several states, including California and it has begun offering numbers as a service for its customers. It has been assigned over one million numbers. With the addition of this numbering capability, Telnyx and the 20 or so other new communications services providers that have received similar approvals can provide services that will ultimately benefit residential and business customers in California by enabling competition against traditional service providers.

Like these other new communications services providers, Telnyx leverages internet infrastructure to provide Telnyx's services, so it relies on wholesale services purchased from carriers such as Level 3 and CenturyLink, including wholesale switching and transport services ("PSTN Interoperability Services"). PSTN Interoperability Services are of paramount importance to next generation service providers as they enable legacy circuit-switched Public Switched Telephone Network ("PSTN") originated calls to properly route to such next generation service providers' end users.

Telnyx offers an interconnected VoIP service, but customers can also purchase one or more of Telnyx's unbundled services and use them as a component of their services offering. For example, a service provider could purchase inbound calling capability and resell just that one service to a provider of a call tracking service. A customer can also combine a Telnyx service with services from other providers, or it can combine Telnyx's inbound transit, outbound transit, switching, numbering and E-911

services into a complete interconnected voice offering of its own. Telnyx's services are all provided on a nomadic basis – the customer or its customers can access the services from anywhere with a broadband connection to the public internet. This is precisely the type of innovative competition that the FCC intended to facilitate when it adopted the Modern Numbering Order. Among other facilitative actions, in the Modern Numbering Order, the FCC permitted next generation service providers such as Telnyx to establish “facilities readiness”³ by evidencing a commercial arrangement with the likes of Level 3, as opposed to by signing an interconnection agreement with the incumbent.⁴ The Commission, too, has been encouraging such competition in order to increase choice and provide other benefits to California customers.

III. Effects on Wholesale Communications Markets

The Proposed Transaction has significant implications for competitive service providers that depend on unbundled wholesale services to provide interoperable services to other service providers and businesses. The communications market is becoming more application-centric and less device-centric, which places more emphasis on one-to-many-device numbering (and particularly the multiple-devices capabilities of interconnected VoIP service) and the ability to obtain and control numbering resources. It is crucial for the growth of the competitive interconnected VoIP market that carriers continue to offer on a nationwide basis wholesale services, including PSTN Interoperability Services, for customer owned telephone numbers.

³ “Facilities readiness” means compliance with the requirements of 47 C.F.R. § 52.15(g)(2), a necessary precursor to obtaining numbers, as set forth in the Modern Numbering Order at par. 36.

⁴ See generally the Modern Numbering Order at pars. 36-37.

At present, to the best of Telnyx's knowledge, the only providers of PSTN Interoperability Services (both in California and nationally) on an unbundled-basis are Level 3, Peerless and Inteliquent.⁵ In March of this year, Inteliquent informed Telnyx that it is in the process of exiting the market for providing unbundled PSTN Interoperability Services.

In searching for other suppliers, Telnyx contacted Level 3 regarding its competing PSTN Interoperability Services, which Level 3 presently sells to IP service providers including Vonage. Members of Level 3's sales team informed Telnyx that Level 3 will not sell the product to Telnyx, because after the merger the combined CenturyLink will not offer the product to competing service providers. If the combined CenturyLink does indeed refuse to offer this product to competitors going forward, then there may soon be only one provider of PSTN Interoperability Services - Peerless.

Presently, the majority of Telnyx's services that are sold in California already rely exclusively on Peerless for PSTN Interoperability Services.⁶ Further, there are at least 21 rate centers in California that Telnyx does not serve because Telnyx believes Level 3 is presently the only provider of PSTN Interoperability Services terminating to such rate centers – many of which are in rural or relatively low-population areas, such as Alpine, Blythe, Coleville, Colusa, Courtland, Earp, Earp (Lost Lakes), Elk Grove, Ferndale, Havasu Lake, Isleton, McCloud, Meadowview, Millville, Palo Verde, Parker Dam, Petrolia, Rio Vista, Roseville (Citrus Heights), Susanville and Walnut Grove.

⁵ Bandwidth.com is the other CLEC with the nationwide reach and capability to provide such a service, but it chooses not to offer the product.

⁶ Telnyx continues to provide services to one LATA for which Telnyx purchases PSTN Interoperability Services from Inteliquent (LATA 973, which includes Palm Springs, Indio, Joshua Tree and Mecca), which services will cease per Inteliquent's exit from the market in mid-2018.

The potential competitive harm is not just limited to Telnyx. These wholesale services are critical for other next generation providers to serve their potential customers, especially in the more rural service areas (such as those listed in the paragraph above) where Level 3 has more extensive coverage than either Inteliquent or Peerless. The absence of PSTN Interoperability Services offerings at reasonable rates and on reasonable terms will prevent the development of the types of new voice competition envisioned by the FCC in the Modern Numbering Order. Indeed, the Commission has repeatedly recognized that wholesale and middle mile services have a direct impact on wireless and last mile residential and small business customers.⁷

The Joint Applicants claim that the “proposed transfer of control will benefit California and enhance competition in the California middle mile market.”⁸ However, no data or analyses are provided to support these claims. The Joint Application does not bother to address the effect of the transaction on wholesale markets. The truth is that the Proposed Transaction will eliminate Level 3 as an aggressive independent competitor in the wholesale space both nationally and in California. In addition to PSTN Interoperability Services, the Joint Applicants provide wholesale internet access and backhaul services that provide essential middle mile connections that enable other providers to connect California residential and mobile customers to the internet. If the Commission does not take action to prevent Level 3 from removing itself as a potential competitor in the market for any or all of these wholesale services, the Commission may indirectly increase rates for wholesale services and place additional barriers on

⁷ See, e.g., Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring, and Reporting on the Market (D.16-12-025), December 8, 2016, pp. 98, 103-104.

competitors that will remain in the marketplace. In other words, if Telnyx and its communications service provider peers are not provided access to unbundled wholesale services including PSTN Interoperability Services, Telnyx and its peers will be unable to compete with one another or with legacy PSTN carriers in the manner contemplated by the Modern Numbering Order, and the California public will be harmed, potentially both in the form of higher rates for services, less innovative services, and the inability to purchase unbundled services. Therefore, the Commission should perform a detailed assessment of the Proposed Transaction to better understand the likely effects in the wholesale market. As the Commission has recognized, competition in wholesale access could enable existing new technology competitors and incent other companies to enter the market and offer improved residential and small business broadband services at more competitive prices.⁹

IV. RECOMMENDATION

The Joint Applicants do not provide sufficient information or detail in their Application to meet their burden of proof regarding the alleged public interest benefits of the Proposed Transaction.

Telnyx urges the Commission to secure commitments to ensure that the Proposed Transaction will increase, rather than reduce, wholesale competition. If it is to grant the Joint Application, the Commission should condition the grant on specific, enforceable merger conditions that ensure continuity and fairness in the offering and pricing of the various wholesale services discussed above, in order to enable competition in the communications marketplace in California and nationwide. Specifically, the

⁸ See the Joint Application at 18.

Commission should require that after the merger is approved, Level 3 (or its successor entity) shall offer at reasonable prices and throughout California each of its existing wholesale services, including wholesale unbundled switching and transport services, for customer owned telephone numbers.

Respectfully submitted,



David Casem
Chief Executive Officer
Telnyx LLC
311 West Superior, Suite 504
Chicago, IL 60654
Telephone Number: (312) 270-8101
Date: August 7, 2017

⁹ Id., pp. 3, 36-37.