

October 6, 2016

VIA ECFS

NOTICE OF EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Business Data Services in an Internet Protocol Environment, WC Docket No. 16-143; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans, WC Docket No. 15-247; Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593*

Dear Ms. Dortch:

On October 4, 2016, Joe Cavender of Level 3 Communications, LLC (“Level 3”) and the undersigned participated in separate meetings with Nick Degani, Legal Advisor to Commissioner Pai, and Amy Bender, Legal Advisor to Commissioner O’Rielly. During the meetings, we expressed Level 3’s support for the adoption of comprehensive reform in the above-referenced proceedings to prevent incumbent LECs from abusing their market power in the provision of circuit-based dedicated services and packet-based dedicated services (together, “business data services”). Mr. Cavender and I made the arguments set forth in Level 3’s September 29, 2016 notice of ex parte.¹ In addition, we explained why the market competition test proposed by AT&T’s and CenturyLink’s economic consultants, Drs. Israel, Rubinfeld, and Woroch (“IRW”), is inappropriate.

We discussed a recent submission in which AT&T reiterates its argument that the Commission’s market competition test should count competitors in a market that have fiber (but not necessarily a splice point) within 2,000 feet of a census tract in which a customer is located.² AT&T’s letter only confirms that the IRW test would be an unreliable means of identifying

¹ See Letter from Thomas Jones, Counsel for Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, & 05-25, RM-10593 (filed Sept. 29, 2016).

² See Letter from Christopher T. Shenk, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 15-247, & 05-25, RM-10593 (filed Sept. 23, 2016).

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business data services providers that can or would actually serve a customer. AT&T's letter supports the conclusion that a provider of business data services generally must deploy a connection from an existing splice point rather than from any location on its transport network. As AT&T explains, providers deploy splice points at somewhat regular intervals.³ In addition, a competitor must deploy a new connection from the edge of the census tract to the customer location within the census tract. When the distance from the splice point to the edge of the census tract and the distance from the edge of the census tract to the customer location are accounted for, the actual build distance for a provider with fiber within 2,000 feet of the census tract is likely to far exceed 2,000 feet in many circumstances. The record in these proceedings indicates that competitors are unlikely to be able to deploy connections in these circumstances. The IRW test ignores these facts and would therefore incorrectly classify providers as potential competitors in many circumstances. In so doing, it would significantly overstate the level of competition in the market.

Please do not hesitate to contact me if you have any questions or concerns regarding this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Counsel for Level 3 Communications, LLC

cc: Nick Degani
Amy Bender

³ Stated somewhat more precisely, Level 3, following sound engineering principles, deploys what it terms *access points* at appropriate intervals along its metro backbone. An access point can be converted into a *splice point*, from which an actual fiber lateral connects to the metro backbone, at relatively low cost.