

REDACTED – FOR PUBLIC INSPECTION

July 21, 2016

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
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 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***
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Dear Ms. Dortch:

On behalf of Level 3 Communications, LLC, I hereby submit the redacted version of the attached *ex parte* filing in the above-referenced proceedings pursuant to the terms of the *Modified Protective Order*,¹ *Second Protective Order*,² *Data Collection Protective Order*,³

¹ *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Modified Protective Order, 25 FCC Rcd. 15168 (2010).

² *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Second Protective Order, 25 FCC Rcd. 17725 (2010).

³ *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Data Collection Protective Order, 29 FCC Rcd. 11657

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Business Data Services Data Collection Protective Order,⁴ and the *Tariff Investigation Protective Order*,⁵ as well as the *Protective Order Extension Order*.⁶

The Highly Confidential version of this submission has been filed with the Secretary's Office.

Please contact me at (202) 303-1111 if you have any questions regarding this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Counsel for Level 3 Communications, LLC

Attachment

(2014); see also *Wireline Competition Bureau Now Receiving Acknowledgments of Confidentiality Pursuant to Special Access Data Collection Protective Order*, Public Notice, 30 FCC Rcd. 6421 (2015).

⁴ *Investigation of Certain Price Cap Local Exchange Carrier Business Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Protective Orders, 30 FCC Rcd. 13680, App. A (2015).

⁵ *Id.* at App. B.

⁶ *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order, WC Docket Nos. 16-143, 15-247, & 05-25, RM-10593, DA 16-722 (rel. June 24, 2016).

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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 Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593*
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Dear Ms. Dortch:

On July 19, 2016, Joe Cavender of Level 3 Communications, LLC (“Level 3”) and I met with Pam Arluk, Irina Asoskov, Justin Faulb, Bill Kehoe, Christopher Koves, Billy Layton, Belinda Nixon, Thom Parisi, Joe Price, Eric Ralph, Marvin Sacks, Deena Shetler, Shane Taylor, and David Zesiger of the Wireline Competition Bureau and Bill Dever of the Office of General Counsel. During the meeting, we reiterated our position that the Commission should classify business data services (1) of 100 Mbps capacity and below as non-competitive in all geographic areas, (2) above one Gbps as competitive in all geographic areas, and (3) above 100 Mbps up to and including one Gbps (“mid-bandwidth services”) as competitive where the criteria specified in a market competition test are met.¹

We explained that the Commission should classify mid-bandwidth business data services as competitive in census blocks in which four or more providers have each deployed a

¹ See Comments of Birch, EarthLink, and Level 3, WC Docket Nos. 16-143, 15-247, & 05-25, RM 10-593, at 46-54 (filed June 28, 2016) (“Joint CLEC Comments”).

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connection in the census block.² In addition, we described the consequences of this test and three other market competition tests for mid-bandwidth services as follows.

(1) A test that classifies mid-bandwidth services in a census block as competitive if there are four or more competitors with a connection in the census block (this assumes the incumbent LEC is ubiquitous, so it is three non-incumbent LECs and the incumbent LEC) would classify **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] This test would also classify 49,977 locations³ nationwide as competitive. That is approximately 23 times the 2,148 locations to which four or more competitors have deployed connections.⁴ It is also 4.7 percent of locations with business data services demand nationwide.

(2) A test that classifies mid-bandwidth services in a census block as competitive if there are three or more competitors with a connection in the census block (again, assuming the incumbent LEC is ubiquitous, so it is two non-incumbent LECs and the incumbent LEC) would classify **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] This test would also classify 126,699 locations nationwide as competitive. That is approximately 59 times the number of locations to which four or more competitors have deployed connections. It is also 12 percent of locations with business data services demand nationwide.

(3) A test that classifies mid-bandwidth services in a census block as competitive if there are four or more competitors with connections in adjacent census blocks (this does not assume the incumbent LEC is ubiquitous) would classify **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] This test would also classify 170,367 locations nationwide as competitive.

² See *id.* at 40-45, 47-54.

³ All references to locations in the description of the results of the four tests exclude locations served with connections that rely on unbundled network elements as inputs.

⁴ See *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 4723, ¶ 220 tbl. 3 (2016).

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That is approximately 79 times the number of locations to which four or more competitors have deployed connections. It is also 16.1 percent of locations with business data services demand nationwide.

(4) A test that classifies mid-bandwidth services in a census block group as competitive if there are four or more competitors with connections in the census block group (this does not assume the incumbent LEC is ubiquitous) would classify **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] This test would also classify 266,226 locations as competitive. That is approximately 124 times the number of locations nationwide with four or more providers in the building. It is also 25.2 percent of locations with business data services demand nationwide.

In addition, we reiterated points made in the Joint CLEC Comments regarding the appropriate means of applying *ex ante* rate regulation to business data services classified as non-competitive. We stated that *ex ante* rate regulation should apply to the leading competitor in a market.⁵ We stated that Level 3 is open to the possibility of a benchmark pricing regime for PBDS, but that it has not been able to devise a viable benchmark regime. As explained in the Joint CLEC Comments, price caps have many advantages over a benchmark approach.⁶ We also explained, again reiterating points made in the Joint CLEC Comments, that the Commission should require that leading competitors file tariffs setting forth the rates, terms, and conditions on which they offer non-competitive business data services.⁷

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

⁵ See Joint CLEC Comments at 57-60.

⁶ See *id.* at 62-69.

⁷ See *id.* at 75-84.

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cc: Pam Arluk
Irina Asoskov
Bill Dever
Justin Faulb
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