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FCC Mail Room

Ex Parte

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

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Re: Special Access Rates For Price Cap Local Exchange Carriers, WC Docket No. 05-25 and RM-10593, Protecting and Promoting the Open Internet, GN Docket No. 14-28; Preserving the Open Internet, GN Docket No. 09-191

Dear Ms. Dortch:

On November 17, 2014, I, on behalf of Level 3 Communications, LLC ("Level 3"), along with Jeff Storey, Level 3 Chief Executive Officer; John Blount, Level 3 President, North America; John Ryan, Level 3 Chief Legal Officer and Scott Seab, Level 3 Senior Corporate Counsel met with FCC Commissioner Mignon Clyburn regarding the above-captioned matters. Level 3 is pleased to have recently closed its acquisition of tw telecom, a major driver of which was to create a more formidable competitor to the incumbent phone and cable companies. We welcome that competition. But we do want to compete on a level playing field, and certain ongoing practices of dominant and/or bottleneck communications providers makes that impossible.

Level 3 explained that special access services in the United States remain critically important, but that competition for special access services continues to be forestalled by the incumbent telephone companies, AT&T, Verizon and CenturyLink--in particular, through their practices of locking out competition through demand lock-up arrangements. For over 12 years, these three incumbents have implemented these anti-competitive and exclusionary practices (which have no commercial justification other than to exclude competition) to perpetuate their dominance over the U.S. special access market. Left largely unchecked over the last decade plus, they have been able to use their market dominance to force nearly all of their major customers (many of which are also their competitors) to "lock-up" 85 to 100% of their existing special access purchases with the incumbents instead of using competitive suppliers. Using their dominance to maintain their dominance, such demand lock-up commitments eliminate the ability of competitors to compete for any meaningful share of the special access market. Every time a consumer uses a smartphone, accesses the Web, sends or receives an e-mail, downloads a song, uses an ATM, or streams a movie, that consumer uses a special access line. And it costs way too much to do so, because these lines are almost exclusively provided by one of the incumbent phone

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companies because of their demand lock up practices. Level 3 alone would save tens of millions of dollars annually if it could buy at least half of its special access demand from competitive suppliers, but the demand lock up practices of the incumbents prevent it. The FCC could easily and quickly make competition a reality by eliminating an incumbent's ability to, through the use of demand lock up arrangements, lock up more than 50% of a customer's existing special access demand. We also discussed that consumer demand for video is driving significant growth in overall traffic volume on the Internet. While content providers such as streaming video services have multiple competitive options for delivering their content to the ISP whose end users have requested it, the ISP itself offers the only path for that content to reach the end user. And several of the largest ISPs—which notably offer their own, competing video services—are leveraging that bottleneck control over access to their users, demanding arbitrary tolls from providers like Level 3 who carry the Internet content requested by the ISPs' end users from the global Internet to the ISPs' last mile networks. This is content the ISPs have committed to make available to their consumers, but which the ISPs alone cannot provide.

If Level 3 will not pay these arbitrary and discriminatory tolls, these ISPs refuse to augment interconnection capacity that is congested to a degree that any network engineer would agree must be augmented for the Internet to function properly. As a result, the interconnection points between these ISP networks and the Level 3 (and other) networks remain congested, resulting in dropped packets and a degraded consumer experience. Indeed, these ISPs are degrading the experience of their own customers as a means to leverage the collection of arbitrary access tolls from the rest of the Internet. While the effects of this congestion vary from application to application, VoIP calls and speed-sensitive online streaming applications are likely the most significantly impacted, widely-used applications. For millions of consumers, they may become virtually unusable. Of course, the ISPs' own, competing video service will be unaffected. To fully address the harms to the Internet that these large, last mile ISPs have both the motive and opportunity to leverage to their own commercial advantage (and to the detriment of American consumers) the interconnection point between last mile broadband ISPs and the rest of the Internet must be addressed as part of the FCC's new open Internet rules.

Please do not hesitate to contact me if you should have any questions.

Sincerely,

/s/ Michael Mooney
Michael Mooney

cc: FCC Commissioner Mignon Clyburn