

Level(3)

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EX PARTE OR LATE FILED

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Federal Communications Commission
Office of the Secretary

Ex Parte

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

Re: MD Docket No. 15-121, *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*.

Dear Ms. Dortch:

Pursuant to section 1.1206 of the Commission's rules, Level 3 Communications, LLC ("Level 3") submits this letter summarizing calls on Wednesday, June 24, 2015 and Thursday, June 25, 2015 between the undersigned and Thomas Buckley, Chief Counsel, Office of the Managing Director.¹

I explained during those calls that Level 3 has reassessed the number of terrestrial international bearer circuits (IBCs) it has under section 43.62 of the Commission's rules subsequent to its filing of April 30, 2015.² We discussed the impact that a revision of Level 3's reported figures would have on the Commission's payment unit estimate for terrestrial IBCs for 2015, as well as the possibility that other carriers may be underreporting terrestrial IBCs given their market position relative to Level 3.³ We also discussed the relationship of section 1.17 of the Commission's rules and the guidance set forth in the Filing Manual regarding corrections to the Circuit Capacity Report.⁴

¹ 47 C.F.R. § 1.1206.

² 47 C.F.R. § 43.62(a)(1). Due to the transition to the new electronic filing system, the International Bureau deferred the deadline to file reports of circuit capacity from March 31, 2015 to April 30, 2015. See Public Notice, International Bureau Announces Filing Window for Annual Section 43.62 International Circuit Capacity Reports, DA 15-298 (rel. Mar. 9, 2015).

³ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Notice of Proposed Rulemaking, MD Docket No. 15-121, FCC 15-59, App. B at 27 (rel. May 21, 2015) (*FY 2015 NPRM*).

⁴ See International Bureau, Filing Manual for Section 43.62 Annual Reports, DA 15-206 at para. 25 (2015) (*Filing Manual*).

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Data supporting this discussion is set forth in an attachment (“Attachment”) to this *ex parte*. Level 3 respectfully requests that pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457, 0.459, the Commission withhold the Attachment from any future public inspection and accord it confidential treatment. The information Level 3 is producing contains sensitive commercial and financial information that falls within Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4). The Attachment also is exempt from disclosure pursuant to § 0.457(g).

Exemption 4 of FOIA provides that the public disclosure requirement of the statute “does not apply to matters that are ... (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). Because Level 3 is providing commercial information “of a kind that would not customarily be released to the public,” this information is “confidential” under Exemption 4 of FOIA. *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

In support of this request and pursuant to Section 0.459(b) of the Commission’s rules, Level 3 hereby states as follows:

1. Identification of Specific Information for Which Confidential Treatment Is Sought (Section 0.459(b)(1))

Level 3 seeks confidential treatment with respect to the terrestrial international bearer circuit data and related regulatory fee data set forth in the Attachment.

2. Description of Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

Level 3 is submitting information pursuant to section 1.1206 of the Commission’s rules, 47 C.F.R. § 1.1206.

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))

Level 3 is seeking confidential treatment of the documents produced because they contain confidential commercial information. 47 C.F.R. § 0.457(d)(2). The Attachment includes data that are privileged and confidential, and public disclosure of such information would likely cause substantial harm to the competitive position of the company.⁵

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The information concerns Level 3’s competition in the highly competitive international terrestrial communications market.

⁵ *See Id.* at para. 36.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

The data in the Attachment are privileged and confidential, and, as the Commission has recognized, public disclosure of such information would likely cause substantial harm to the competitive position of the company.⁶

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

The information in the Attachment has been generated for confidential submission to the Commission, and has not been distributed to the public. Level 3 has also not distributed this information broadly within the company.

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

The information submitted is not generally available to the public and has not been disclosed to third parties other than Level 3's outside counsel.

8. Justification of the Period During Which the Submitting Party Asserts That Material Should Not Be Available For Public Disclosure (Section 0.459(b)(8))

Level 3 requests that the information be withheld from public disclosure indefinitely. It will remain commercially sensitive and potentially damaging to Level 3 for as long as Level 3's systems and network reflect the structure disclosed here. As that period of time is indefinite, no specification of a time period is possible at this time.

Sincerely,

/s/ Nicholas G. Alexander
Nicholas G. Alexander

Attachment

cc: Thomas Buckley

⁶ See *id.*; see also *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, 28 FCC Rcd 575, 611, para. 115 (2013).

[Redacted for Public Inspection]