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January 14, 2016

Ex Parte

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

Re: Petition for a Declaratory Ruling Regarding the Applicability of the IntraMTA Rule to LEC-IXC Traffic, WC Docket No. 14-228

Dear Ms. Dortch:

On January 12, 2016, I, on behalf of Level 3 Communications, LLC (“Level 3”), met with Pam Arluk, Victoria Goldberg, Joe Price, Deena Shetler, and Doug Sloten of the Wireline Competition Bureau; Peter Trachtenberg of the Wireless Telecommunications Bureau; and David Gossett of the Office of General Counsel regarding the above-captioned matter. I urged the Commission to issue a decision in this proceeding promptly, noting that the record was complete and that further delay was harmful to the parties and the public interest.

I informed the Commission that Level 3 has been sued by certain LECs asserting that Level 3 owes the LECs access charges for intraMTA wireless traffic carried by Level 3. As Level 3 and others have explained, the Commission has already rejected the LECs’ argument that such traffic is subject to access charges, and has instead confirmed that it is subject to reciprocal compensation.¹ Nevertheless, some LECs have insisted that the Commission did not

¹ See *USF/ICC Transformation Order*, FCC 11-161, 26 FCC Rcd 17,663 ¶¶ 1003, 1004, 1007 (2011) (“[C]alls between a LEC and a CMRS provider that originate and terminate within the same Major Trading Area (MTA) at the time a call is initiated are subject to reciprocal compensation obligations under section 251(b)(5), rather than interstate or intrastate access charges.... [T]his rule [is] referred to as the ‘intraMTA’ rule.... Because the changes we adopt in this [USF/ICC Transformation] Order maintain, during the [intercarrier compensation reform] transition, distinctions in the compensation available under the reciprocal compensation regime and the compensation owed under the access regime, parties must continue to rely on the intraMTA rule to define the scope of LEC-CMRS traffic that falls under the reciprocal compensation regime. We therefore take this opportunity to remove any ambiguity

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mean what it said, and, encouraged by a recent district court decision² that has created yet more confusion and disagreement in the industry on this issue, have filed lawsuits against Level 3. Level 3 is confident in its position on the law, and intends to vigorously defend itself against these lawsuits. But there is no reason that Level 3 and the LECs should be forced to litigate this matter. Widespread industry disputes, and the attendant distraction and waste of resources, over what amounts to a simple disagreement about what the Commission's rule provides do not serve the public interest.

I also observed that Level 3, like certain other carriers, carries intraMTA wireless traffic both as a LEC and as an intermediary carrier. If other courts (incorrectly) follow the recent Texas court decision, Level 3 will have no choice but to adhere to this incorrect view of the law and to bring lawsuits as a LEC. Again, the public interest is not served by requiring yet more lawsuits to bring this widespread dispute to closure.

Whether intraMTA wireless traffic, when carried by an intermediary carrier like Level 3, is subject to reciprocal compensation (what the Commission has said, and what Level 3 understands the rule to be), subject to access charges (what petitioners in this proceeding seek), or subject to *both* reciprocal compensation and access charges (the holding of the Texas district court), is, at bottom, a question of what the Commission intends. The Commission, not potentially dozens of courts, should decide that question. And it should do so promptly, before yet more resources are wasted in the courts.

Please contact me if you have any questions regarding this matter.

Sincerely,

/s/ Joseph C. Cavender
Joseph C. Cavender

cc: Pam Alruk
Victoria Goldberg
Joe Price
Deena Shetler
Doug Slotten
Peter Trachtenberg
David Gossett

regarding the interpretation of the intraMTA rule.... [I]ntraMTA traffic is subject to reciprocal compensation *regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier.*") (emphasis added).

² *In re intraMTA Switched Access Charges Litigation*, Civ. No. 3:14-MD-2587-D (MDL No. 2587) (N.D. Tex. Nov. 17, 2015).