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# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202)424-7500
FACSIMILE (202) 424-7645
WWW.SWIDLAW.COM

TAMAR FINN
DIRECT DIAL (202) 945-6917
TEFINN@SWIDLAW.COM

NEW YORK OFFICE
919 THIRD AVENUE
NEW YORK, NY 10022
(212) 758-9500 FAX (212) 758-9526

September 15, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**VIA HAND DELIVERY**

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Level 3 Communications, LLC *Ex Parte* Presentation in CC Docket 99-68 (Inter-Carrier Compensation for ISP-Bound Traffic)

Dear Ms. Salas:

Pursuant to Sections 1.1206(a) and (b) of the Commission's Rules, 47 C.F.R. § 1.1206(a) and (b), this letter is to provide notice of an oral *ex parte* presentation by Level 3 Communications, LLC ("Level 3") in the above-referenced proceeding on Thursday, September 14, 2000. Patricia Paoletta, Vice President, Government Affairs, William P. Hunt III, Vice President and Regulatory Counsel, and Michael Romano, Attorney of Level 3 and Tamar Finn of Swidler Berlin Shereff Friedman, LLP met with Dorothy Attwood, Mary Beth Richards and Jack Zinman of the Common Carrier Bureau and Tamara Preiss and Jane Jackson of the Competitive Pricing Division. The purpose of the meeting was to discuss the attached handout, which was distributed at the meeting.

Thank you for your attention to this correspondence. Pursuant to the Commission's rules, an original and one (1) copy of this letter is provided. A copy is also being hand-delivered to Dorothy Attwood and members of her staff. Please date-stamp and return the additional copy of this letter for our records.

Sincerely,

Tamar E. Finn

Tamar E. Finn
Counsel for
Level 3 Communications, LLC

Enclosure

cc: Dorothy Attwood
Mary Beth Richards
Jack Zinman
Tamara Preiss
Jane Jackson
Michael Romano

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# Resolving Intercarrier Compensation:

# The Need for a Comprehensive Solution

Level 3 Communications, LLC

# Resolving Intercarrier Compensation: The Need for a Comprehensive Solution

## It's Not Just About Reciprocal Compensation for ISP-Bound Traffic

At Least Four Issues Must Be Addressed
Regarding Compensation for the Use of Local Carrier Networks:

1. Compensation for ISP-bound traffic
2. Points of Interconnection
3. Costs of Originating Traffic
4. Compensation in Virtual NXX Arrangements

# Issue 1:
# Compensation for ISP-Bound Traffic

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# Compensation for ISP-Bound Traffic

- In the absence of a specific federal rule, State commission application of Section 251(b)(5) reciprocal compensation is the logical consequence of treating ISPs as local exchange end users.
- Going forward, intercarrier compensation for ISP-bound traffic must not hinge on local / non-local distinction.
- Intercarrier compensation for ISP-bound traffic should mirror 251(b)(5) reciprocal compensation because network functions are the same.
- Originating carrier should be economically indifferent because payment of reciprocal compensation reflects avoided termination costs.

# Issue 1:
# Compensation for ISP-Bound Traffic

- Resolution of Issue 1 could be nullified by failing to address Issues 2, 3, and 4.
  - Issue 2: Points of Interconnection
  - Issue 3: The Costs of Originating Traffic
  - Issue 4: Location and Terminating Compensation

# Issue 2:
# Points of Interconnection

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# Points of Interconnection

- Where should LECs be required to exchange traffic (including ISP-bound traffic)?
- Section 251(c)(2) requires ILECs to allow CLECs to interconnect "at any technically feasible point."
- "[T]his means that a competitive LEC has the option to interconnect at *only one* technically feasible point in each LATA." -- Paragraph 78 of FCC's SWBT Texas Section 271 Order (emphasis added).

# Issue 2: Points of Interconnection

- ILECs want CLECs to interconnect at numerous locations throughout LATAs.
  - SWBT: TX PUC Arbitration Award requires interconnection in every local calling area served by CLEC.
  - Ameritech, SNET, Pacific Bell: Require interconnection at every tandem upon market entry. Rejected by CA arbitrator and IL Commission. Currently being arbitrated by Level 3 in CT and MI.
  - BellSouth: Demands the ability to designate own points of interconnection for its originating traffic. Currently being arbitrated by Level 3 in FL, GA, KY, and NC.
  - Qwest: Requires interconnection in every local calling area.

# Issue 2: Points of Interconnection

- Mandating interconnection in multiple locations within a LATA violates the law and could undermine resolution of the intercarrier compensation issue.

- CLECs would bear additional costs to build out to all ILEC-designated POIs, regardless of network efficiencies or traffic volumes.

- FCC must reiterate that CLECs may designate POIs.

# Issue 3:
# The Costs of Originating Traffic

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# The Costs of Originating Traffic

- The originating carrier brings traffic to the POI, and the originating carrier should pay the terminating carrier for transporting and terminating traffic beyond the POI. -- *Local Competition Order* (at paragraph 1034).

- Each carrier bears costs to build out facilities to point of interconnection. -- *Local Competition Order* (at paragraph 553).

# Issue 3:
# The Costs of Originating Traffic

- This policy has been recently affirmed:

  – The cost of the facilities used to deliver this traffic is the originating carrier's responsibility, because these facilities are part of the originating carrier's network. . . . This regime represents 'rules of the road' under which all carriers operate, and which make it possible for one company's customer to call any other customer even if that customer is served by another telephone company. -- *TSR Wireless v. U S West*, FCC 00-194 (at paragraph 34)

- ILECs want to rewrite the "rules of the road" by forcing CLECs to pay for costs of facilities used to take ILEC-originated traffic to the POI.

# Issue 3:
# The Costs of Originating Traffic

- Arises in "Virtual NXX" Context
  - Virtual NXX: service to ISPs with local dial-in numbers regardless of ISPs' physical locations.
  - Widely used by ILECs and CLECs.
  - Discussed in Comments: SBC Comments at 43; Verizon Comments at 18; BellSouth Comments at 13; Conversent Reply Comments.
- Originating carrier bears no additional cost to deliver these calls to POI
  - All calls always go to POI regardless of customer location.

# Issue 3:
# The Costs of Originating Traffic

- ILECs are using "FX-type" characterizations as a means to offset any potential liability for reciprocal compensation.
  - At issue in Level 3-SBC TX, IL, MI, CA, CT Arbitrations and other proceedings.

- If ILECs prevail at the state level, compensation to CLECs will be offset and CLECs will be forced to pay for majority of ILECs' originating ISP-bound traffic.

# Issue 3:
# The Costs of Originating Traffic

- Under ILEC plan, FCC Intercarrier Compensation Resolution would be nullified by ILEC traffic delivery proposal.

- Under ILEC plan, widespread local calling presence of ISPs would be harmed.

# Issue 3:
# The Costs of Originating Traffic

- To avoid ILEC undoing of FCC action on intercarrier compensation, FCC must reaffirm "rules of the road."

  - Costs of originating ISP-bound traffic will be borne by the originating customer, just as they are in the context of any other locally-dialed call.

# Issue 4:
# Location and Terminating Compensation

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# Location and Terminating Compensation

- Virtual NXX and Terminating Compensation
  - Use of Virtual NXX is widespread.
  - Many ISPs do not maintain a physical presence in each local calling area.
- ILECs now claim that this traffic is not eligible for reciprocal compensation because it is not local.
  - At issue in TX, IL, MI, CT, FL, GA, KY, NC arbitration proceedings.
  - TX and IL have already ruled in ILECs' favor on this point.

# Issue 4:
# Location and Terminating Compensation

<u>Consequences</u>

- Many calls destined for ISPs would not be subject to reciprocal compensation -- or *any* compensation -- under ILEC proposals.
- May nullify any FCC decision in this docket.
- Widespread local calling presence of ISPs would be harmed, limiting the availability of the Internet.
- Imposes costs on new entrants and potentially on ISP subscribers.

# Issue 4:
# Location and Terminating Compensation

- The FCC should affirmatively rule that whatever compensation mechanism is adopted for ISP-bound traffic will apply regardless of whether the ISP maintains a physical presence in a given local calling area.