

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review)	
)	IB Docket No. 00-202
Policy and Rules Concerning the International, Interexchange Marketplace)	
)	

**COMMENTS OF
LEVEL 3 COMMUNICATIONS, LLC**

Helen E. Disenhaus
Kevin D. Minsky
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7645 (Facsimile)
(202) 424-7500 (Telephone)

Of Counsel:

Gregory L. Rogers, Esq.
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Counsel to Level 3 Communications, LLC

Dated: November 17, 2000

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review)	
)	IB Docket No. 00-202
Policy and Rules Concerning the International, Interexchange Marketplace)	

**COMMENTS OF
LEVEL 3 COMMUNICATIONS, LLC**

Level 3 Communications, LLC ("Level 3"), by its undersigned counsel, respectfully submits comments to the Federal Communications Commission ("Commission") in the above-referenced proceeding.¹

I. Introduction and Overview

Level 3 is a telecommunications and information services company that is building an advanced Internet protocol technology-based network that will include metropolitan networks in 56 U.S. markets and 21 international markets. Level 3 holds international authorization under Section 214 and provides both domestic and international interexchange telecommunications services to business customers and to other carriers on a wholesale basis. At this time, Level 3 does not offer services to residential customers.

As a general matter, Level 3 urges the Commission to more clearly define the types of international services that are intended to be covered by its rules. As proposed,

¹ *In the Matter of 2000 Biennial Regulatory Review Policy and Rules Concerning the International, Interexchange Marketplace*, Notice of Proposed Rulemaking, IB Docket No. 00-202 (rel. October 18, 2000) ("*NPRM*").

the rules would appear to apply to two very different kinds of international services -- interexchange voice services and private line services -- offered to very different kinds of customers. The Commission should recognize that international services are typically offered to two extremely different customer bases -- to consumers, and to carriers and large business users. Different levels and types of public information are appropriate for each of these customer classes. A regulatory rule that attempts to cover all services to all customers in the same way will fail to adequately recognize the divergent issues related to different products and customers.

Therefore, if the Commission proceeds with the detariffing of international interexchange services proposed in the *NPRM*, Level 3 recommends that, before final rules are adopted, the proposed implementation rules be modified to address several important issues. In particular, Level 3 recommends the following modifications of the proposed rules: (1) the Commission's proposed public disclosure requirement -- requiring a carrier to make available at its place of business or on its website its service rates, terms, and conditions -- would be inapplicable to international private line or dedicated access services; and (2) the Commission would not require carriers to file their international private line or dedicated access services customer contracts with the Commission or to make them available at their places of business or on their websites.²

II. International Private Line and Dedicated Access Services Should Not be Subject to the Commission's Proposed Public Disclosure Requirement.

The Commission should clarify that its proposal to require the public disclosure of carriers' rates, terms, and conditions of services would apply only to international

² Level 3 also recommends that voice services sold to non-consumer customers such as other carriers and large businesses be exempt from these requirements.

interexchange consumer voice services and not to international private line and dedicated access services.³ The Commission should therefore so limit its public disclosure rule that requires non-dominant interexchange carriers to "make information available to the public concerning rates, terms, and conditions for all of their international interexchange services, in at least one location during regular business hours, and that such carriers that have Internet websites post this information online."⁴

It is consumer end-users of international interexchange voice services (*i.e.*, residential and small business customers), rather than large business or carrier customers, who could benefit from the public disclosure of a carrier's general international voice rates and services at its office or website. Such residential and small business customers typically sign up for a carrier's mass-marketed international voice services or calling plans and may, absent tariffs or such published information, lack adequate information about the carrier's services. These customers could find it helpful to be able to review and compare service and rate information on the various carriers' websites. It is highly unlikely, however, that consumer customers would acquire international private line services.

In contrast, the sophisticated customers who purchase international private line and dedicated access services -- *e.g.*, business customers and other telecommunications carriers -- have substantial knowledge of the telecommunications market. These business customers are extremely sophisticated and typically negotiate individual contracts with

³ *See id.* ¶ 5.

⁴ *Id.*

carriers for customized service packages specially tailored to their particular needs.⁵ Such customers look to a carrier's sales and marketing staff for information about applicable terms, rates, and conditions of service, and these customers therefore would gain little or no benefit from the availability of an international carrier's generic rates and services at the carrier's place of business or on its website.

Moreover, the market for wholesale and private line telecommunications services is very dynamic. Requiring the public availability of international private line and dedicated access service terms and conditions at a carrier's place of business or on its website, where they would be available to competitors as well as customers, could in fact deter competition and reduce carrier flexibility to immediately react to changing market conditions.⁶ To the extent that a carrier thinks that providing website information about international private line and dedicated access service offerings would assist the carrier's marketing efforts, the carrier is certain to use its website to make the information available. In this highly competitive segment of the international services market, the Commission can rely on the marketplace to address the information requirements of sophisticated customers.

In those instances in which there may be an absence of competition on international routes -- *e.g.*, where a carrier is dominant or enters into a contract with a

⁵ Under the Commission's current rules, in certain circumstances contract tariffs with customers may be used in lieu of a tariff. *See* 47 C.F.R. § 61.22 (2000).

⁶ The Commission has concluded that vigorous competition already exists in the international interexchange marketplace. Adding a new publication requirement for international private line services would not likely strengthen competition, but rather would only add to a carrier's regulatory compliance burden. *See NPRM* ¶ 7.

foreign carrier with market power -- there is sufficient protection from potential unreasonable discrimination in pricing under the Commission's existing rules.⁷

III. International Private Line and Dedicated Access Service Contracts Should Not be Required to be Filed with the Commission or Made Available at a Carrier's Place of Business or on its Website.

The Commission should also clarify that carriers entering into international private line and dedicated access service contracts with end user customers or other carriers would not be required to file such contracts with the Commission *or* make them available at the carriers' places of business or on their websites.⁸ First, as the Commission recognized, "Section 211(b) gives the Commission 'the discretion to exempt carriers from filing contracts, including those referred to in Section 211(a) [of the Communications Act], when we determine that those contracts are of minor significance to the regulatory scheme.'"⁹ Therefore, should the Commission implement detariffing, it has the authority to exempt international private line and dedicated access service contracts both from the requirement that contracts be filed with the Commission, and from any rule requiring contracts to be made available at a carrier's place of business or website.

⁷ See *infra* note 13.

⁸ It appears that under the draft rules proposed in the *NPRM*, private line service contracts would not be required to be filed with the Commission. However, the *NPRM* is unclear about whether, under the proposed public disclosure requirement, a carrier must nonetheless make such international private line contracts available to the public at its place of business or on its website. For the reasons stated herein, Level 3 respectfully requests that the Commission clarify that international private line and dedicated access service customer contracts (a) need not be filed with the Commission and (b) are not subject to the public disclosure requirement.

⁹ *Id.* ¶ 33. Section 211(a) requires "that every carrier file contracts with carriers affecting traffic regulated under the Communications Act." *Id.*

Second, publication of these international private line and dedicated access service agreements at a carrier's website is not necessary to spur competition in the provision of international interexchange services. As the Commission stated in the *NPRM*, there already is "an increase in competition for international services spurred by commitments made by the U.S. and other countries in the WTO Basic Telecom Agreement" and the adoption of the Commission's *Foreign Participation Order*.¹⁰ Indeed, the Commission's predicate for detariffing is the existence of a competitive market.¹¹ To nonetheless require filing or public availability of such customer contracts not only is unnecessary in a market that the Commission has recognized is sufficiently competitive and sophisticated but also would do little to alleviate the burdens of tariffing.

Third, these customer contracts often contain confidential and proprietary information that under the current rules can be filed under confidential treatment.¹² Therefore, for the Commission now to require the publication of such agreements at a carrier's place of business or on its website could deter rather than promote competition.

Finally, such agreements need not be made publicly available to protect against unreasonably discriminatory pricing by carriers. Under Section 202 of the Communications Act, carriers are prohibited from imposing "unjust or unreasonable

¹⁰ *NPRM* ¶ 10.

¹¹ *See id.* ¶ 7.

¹² The Commission has recognized the need for carriers to file certain agreements under confidential treatment. For example, a carrier providing service on an international route that is exempt from the international settlements policy under 47 C.F.R. § 43.51(g)(2), but that is required by 47 C.F.R. §§ 43.51(a) or (b) to file a contract covering that route with the Commission, may request confidential treatment under 47 C.F.R. § 0.457 for the rates, terms, and conditions that govern the settlement of U.S. international traffic. *See* 47 C.F.R. § 43.51(f) (2000).

discrimination in charges, practices, classifications, regulations, facilities, or services"¹³ This obligation would remain in effect following detariffing. Moreover, under the proposed rules included in the *NPRM*, the Commission would require carriers to "maintain price and service information regarding all of their international interexchange offerings and that they be able to submit this information within ten business days to the Commission upon request"¹⁴ Therefore, after detariffing occurred, the Commission would retain the authority to investigate and bring an enforcement action against a carrier for discriminatory pricing or violations of the Commission's rules or the Communications Act. Adoption of this proposed document retention rule would ensure that information relevant to any such Commission investigation would be available to the Commission.

IV. Conclusion

For the foregoing reasons, Level 3 respectfully requests that the Commission modify its proposed rules as described herein (1) to exclude international private line and dedicated access services from the proposed public disclosure requirement that the terms and conditions governing international services be made available at a carrier's place of business or on its website, and (2) to clarify that international private line and dedicated

¹³ 47 U.S.C. § 202. In addition, to the extent the Commission is concerned that the basis for detariffing -- a competitive market -- may not exist on certain international routes, the Commission has already crafted the appropriate prophylactic rule by requiring to be filed with the Commission carrier-to-carrier contracts (1) with carriers that are classified as dominant for reasons other than foreign affiliation; and (2) with foreign carriers that possess market power. *NRPM* ¶ 5.

¹⁴ *Id.* ¶ 26.

access service contracts would not be required to be filed with the Commission or made available to the public at a carrier's place of business or on its website.

Respectfully submitted,

Helen E. Disenhaus
Kevin D. Minsky
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
(202) 424-7500 (Telephone)
(202) 424-7645 (Facsimile)

Counsel for Level 3 Communications, LLC

Of Counsel:

Gregory L. Rogers, Esq.
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021