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January 4, 2001

EX PARTE – Via Electronic Filing

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication
Inter-Carrier Compensation for ISP-Bound Traffic
CC Docket 99-68

Dear Ms. Salas:

On January 3, 2001, I, on behalf of Level 3 Communications, met with Commissioner Susan Ness and Jordan Goldstein, Legal Advisor to Commissioner Ness, regarding the above-captioned matter. Also present in this "mini-debate" were Richard J. Metzger of Focal Communications, Frank Simone of AT&T, Gary Phillips of SBC, and Frank Gumper of Verizon. This letter summarizes only my presentation on behalf of Level 3 Communications.

Level 3 supports the Commission's efforts to bring compensation for terminating local traffic to costs, but believes that the appropriate resolution of the reciprocal compensation issue depends on the longer-term view of the appropriate structure for all intercarrier compensation. Deciding selectively to move one form of intercarrier compensation to bill and keep would skew industry incentives to reach a coordinated, comprehensive intercarrier compensation scheme, and may tend to lock in "bill and keep" without a full understanding of the consequences of doing so.

Furthermore, mandating bill and keep for dial-up ISP-bound traffic would depart from the Commission's long-standing view of the caller as cost-causer for usage sensitive costs. The CLEC terminating the ILEC's customer's call does sustain some cost, and under existing precedents and rules merits cost-based compensation. While recent FCC staff studies suggest that traditional theories of cost-causation may warrant review, such a fundamental change should be undertaken within the context of a comprehensive inquiry on intercarrier compensation, so that the Commission has a full appreciation of the economic and policy consequences of its decision.

In addition, as interconnection agreements are renegotiated, reciprocal compensation rates continue to fall. An example is Level 3's agreement with Verizon, which governs interconnection including reciprocal compensation in all of the former Bell Atlantic/NYNEX states. Under that agreement, the reciprocal compensation rate is now $.00120 per minute in all states where Level 3 is currently operating, except for New York, which has a rate of $.00150. This is much lower than rates cited by ILECs of $.004 or higher. The Level 3 agreement is not unique. ICG, for example, has entered into settlement agreements with similarly low reciprocal compensation rates. It is also important to note that the Level 3 reciprocal compensation rate with Verizon is symmetrical, i.e., it is also the rate that applies to any traffic originated by Level 3 and terminated by Verizon.

Level 3 is continuing to attempt to negotiate agreements with other companies. It is important to recognize that reciprocal compensation rates are just one component of these agreements, which also address other interconnection and network architecture issues. By selectively intervening on only one issue, without reaffirming issues related to points-of-interconnection or use of virtual NXX, the Commission would be reducing, rather than increasing, the likelihood that all these issues can be resolved by contracting parties without regulatory intervention.

It is also doubtful that there is really a "problem" that needs to be solved by regulatory intervention. Data underlying the ILEC's own projections show that the number of dial-up Internet access subscribers is expected to peak within the next two years, with only modest growth of about 5% over those 2 years, and decline thereafter. While ILECs have hypothesized that peer-to-peer applications or "always on" devices could drive dial up usage higher, these hypotheses ignore the real technological limitations of dial-up as a relatively slow means of Internet access. They are pure speculation. Many existing agreements, such as the Level 3/Verizon agreement, run through 2002 or 2003, so a Commission "solution" would appear to arrive as the postulated "problem" is ebbing.

Finally, transitional caps on reciprocal compensation based on ratios of inbound to outbound traffic, with no compensation above the cap, are wholly arbitrary, have no relationship to cost, and are technologically biased against next generation packet networks. Given the present development of IP services, a carrier must use circuit switches in order to generate significant volumes of local outbound traffic. For carriers using IP networks like Level 3, caps based on ratios of inbound to outbound traffic therefore immediately impose bill-and-keep, creating no transition. In addition, there is simply no relationship between the relative proportion of outbound traffic to inbound traffic and cost. Even when there are no minutes of origination, there are costs of termination. Even if there are scale economies, the cost of a minute of termination does not change based on the relative proportion of minutes of origination.

Reciprocal compensation for dial-up ISP traffic is an issue that is being addressed satisfactorily in the marketplace. The Commission should move forward to reexamine intercarrier compensation as a whole. It should not move forward to impose patchwork solutions to issues that will dissipate.

In accordance with Commission rules, a copy of this letter is being filed electronically in the above-captioned docket.

Sincerely,

/s/

John T. Nakahata
for Level 3 Communications

JTN/krs
cc: Commissioner Susan Ness
Mr. Jordan Goldstein, Legal Advisor to Commissioner Ness
Ms. Anna Gomez, Legal Advisor to Chairman Kennard
Ms. Rebecca Beynon, Legal Advisor to Commissioner Furchtgott-Roth
Mr. Kyle Dixon, Legal Advisor to Commissioner Powell
Ms. Sarah Whitesell, Legal Advisor to Commissioner Tristani
Ms. Dorothy Attwood, Chief, Common Carrier Bureau
Mr. Glenn Reynolds, Associate Chief, Common Carrier Bureau
Ms. Jane Jackson, Chief, Competitive Pricing Division, Common Carrier Bureau
Ms. Tamara Preiss, Deputy Chief, Competitive Pricing Division, Common Carrier Bureau