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March 13, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-B204
Washington, DC 20554

Re: *Ex Parte* of Level 3 Communications, LLC
In the Matter of City Signal Communications, Inc. v. Cities of Cleveland
Heights, Wickliffe and Pepper Pike, Ohio – CS Docket No. 00-254

Dear Madame Secretary:

Pursuant to Section 1.206(b)(1) of the Commission's Rules, 47 C.F.R. § 1.1206(b)(1), Level 3 Communications, LLC ("Level 3") respectfully submits an original and two copies of a written *ex parte* letter to be associated with CS Docket No. 00-254.

Please date-stamp the enclosed extra copy of this filing and return it via our messenger. Should you have any questions please do not hesitate to contact me.

Sincerely,



Jeffrey M. Karp
L. Elise Dieterich
Heather A. Thomas
Counsel to Level 3 Communications, LLC

cc: William P. Hunt, III (Level 3)

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Magalie Roman Salas
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Washington, DC 20554

Re: CS Docket No. 00-253, 00-254, 00-255, City Signal Communications, Inc.
Petitions for Declaratory Ruling Concerning Use of Public Rights-of-Way

Dear Madame Secretary:

We submit this letter on behalf of Level 3 Communications, LLC ("Level 3"), in the above referenced "permit but disclose" proceedings, pursuant to the Commission's *ex parte* rules, 47 C.F.R. §§ 1.1200-1.1216, for the purpose of responding to a request made in reply comments that a portion of Level 3's Comments be stricken and that the Commission deny Level 3's request for relief as being outside the Commission's jurisdiction. For the reasons set forth below, Level 3 respectfully submits that its Comments are proper and that the relief Level 3 has urged the Commission to implement in these proceedings is wholly within the Commission's power to grant.

Introduction

In Reply Comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"), NATOA and several of its constituent cities contested the Comments filed by Level 3, and requested that Level 3's comments be denied, stricken or dismissed as outside the Commission's jurisdiction. Level 3 is concerned that NATOA's Reply Comments misconstrue the nature of the relief that Level 3 has urged the Commission to grant in these proceedings, and distort Level 3's position. Level 3, therefore, respectfully submits this clarification and rebuttal.

Level 3's Comments

In its Comments, Level 3 urged the Commission to grant City Signal's petitions and

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Heights, Ohio, that prohibit or have the effect of prohibiting, by imposing excessive delay and discriminatory requirements on the construction of facilities, the provision of telecommunications service. Level 3 explained in its Comments that it supports City Signal's request for relief because Level 3, too, has experienced the kinds of local barriers to market entry of which City Signal complains. In support of this contention, Level 3 filed a detailed affidavit attesting to specific (but typical) problems Level 3 has experienced elsewhere in the country. The comments filed by other telecommunications providers in these proceedings confirm that the difficulties experienced by City Signal and Level 3 in attempting to gain timely rights-of-way access for the construction of new facilities are not unique. Therefore, in its Reply Comments, Level 3 urged the Commission, in addition to granting City Signal's preemption petitions with respect to the Ohio cities, to "adopt procedures to help new market entrants obtain expeditious access to public rights-of-way."¹ Level 3 also requested, in the alternative, that the Commission take the opportunity, in ruling on City Signal's petitions, to address generally the issues of municipal delay and discrimination that are raised by these proceedings.

The Commission necessarily must interpret Section 253 in order to rule on City Signal's petitions. In so doing, the Commission has an important opportunity, Level 3 believes, to clarify the scope of local rights-of-way management authority under Section 253, and the types of local action and regulation that are – and are not – permissible. City Signal's petitions require that the Commission address the question whether delay in processing requests for rights-of-way access, and the imposition of discriminatory construction requirements on new market entrants, will be countenanced. Consistent with past Commission decisions, and in keeping with the broader judicial tradition of providing guidance on statutory interpretation to future potential litigants, Level 3 has requested in its Comments and Reply Comments that the Commission provide general guidance in its decision in these proceedings that may assist other cities and other telecommunications providers to avoid similar controversies in the future.

NATOA's Opposition

NATOA, however, in its Reply Comments, mischaracterizes Level 3's request and insists that the Commission strike from the record information submitted by various commenters to illustrate the nature of the problems the Commission is being asked here to address. Indeed, NATOA introduced its Reply Comments as follows:

"Our focus is on the comments of [MFN], [Adelphia] and [Level 3], whose attempted interpleading of more than 40 communities not named in the City Signal petition is an abuse of even the Commission's relaxed processes. As to the ten communities joined here [with NATOA, in its Reply Comments], the complaints are devoid of substance and should be denied, if not stricken or

¹ Reply Comments of Level 3 Communications, LLC, February 14, 2001, at 1.

dismissed outright.”²

While apparently recognizing that Level 3 has not, in fact, requested the Commission to preempt the regulations of any cities other than the three named by City Signal, NATOA, nonetheless, asserts: “While Level 3 properly confines its request for relief to the Cleveland cities subject to City Signal’s petitions, it remains to be seen whether a Commission finding in favor of City Signal would be of any help to Level 3 in its named cities of Burbank, Culver City and Vernon, California.”³ We hope that NATOA does not mean by this assertion that its constituent cities will disregard any general guidance provided by the Commission in these proceedings.

Conclusion

The comments of Level 3 and others highlighting problems elsewhere in the country similar to those encountered by City Signal in Ohio were intended to illustrate that the problems complained of in these proceedings are ubiquitous, and that Commission guidance to the parties on both sides of the rights-of-way equation is sorely needed. Level 3 submits that it would be a terrible waste of both the Commission’s and the commenters’ resources, were it to become necessary to litigate the identical issues with each individual municipality nationwide in order to establish whether delay or discrimination in a given instance is allowable under Section 253. Rather, it is precisely because these problems are widespread, and it is impractical to seek Commission guidance in each individual instance, that general guidance from the Commission in the context of these proceedings is so essential.

² Reply Comments of the National Association of Telecommunications Officers and Advisors; Chandler, AZ; Burbank, Culver City, Glendale, Richmond and Walnut Creek, CA; Jefferson Parish, LA; Newton, MA; Dearborn, MI; and Clayton, MO, February 14, 2001 (hereinafter, “NATOA Reply Comments”), at 1.

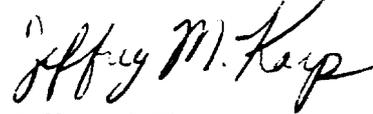
³ Level 3 stands by the affidavit filed in support of its Comments. What is apparent from NATOA’s Reply Comments is that a delay that is unacceptable to a competitive provider, which is constrained by customer commitments and financing obligations, is viewed as routine by the municipalities. For example, the NATOA Reply Comments imply that a delay of three months by the City of Burbank before even informing Level 3 of the City’s rights-of-way access requirements should be viewed as both routine and acceptable: “[I]t appears from [Level 3’s] affidavit that Level 3 waited *no longer than* the three-month interval from February to May 1999 to receive firm word that an encroachment permit would be required.” NATOA Reply Comments at 5, footnote 7. From Level 3’s perspective, in contrast, a city’s three month delay in informing Level 3 of the form of permission the city intends to require – which is just the first step in the process of gaining rights-of-way access – poses a significant barrier to entry and places Level 3 at a substantial competitive disadvantage *vis a vis* incumbent providers already in the market.

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We appreciate your consideration of these additional points.

Respectfully submitted,

A handwritten signature in black ink that reads "Jeffrey M. Karp". The signature is written in a cursive style with a large, prominent "J" and "K".

Jeffrey M. Karp

L. Elise Dieterich

Counsel to Level 3 Communications, LLC

cc: William P. Hunt, III (Level 3)

CERTIFICATE OF SERVICE

I, Heather A. Thomas, do hereby certify that on this 13th day of March, 2001, a copy of the foregoing letter of Level 3 Communications, LLC, was served on the following:

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Common Carrier Bureau
445 12th Street, SW, Room 5-C327
Washington, DC 20554

Trudy Hercules
Cable Services Bureau
445 12th Street, SW, Room 4-C474
Washington, DC 20554

International Transcription Services, Inc. (ITS)
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Washington, DC 20554



Heather A. Thomas