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ATTORNEYS AT LAW

May 11, 2001

RECEIVED

MAY 11 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

EX PARTE – VIA HAND DELIVERY

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

EX PARTE OR LATE FILE

Re: Inter-Carrier Compensation for ISP-Bound Traffic  
CC Docket 99-68 and  
Implementation of the Local Competition Provisions of the  
Telecommunications Act of 1996, CC Docket 96-98 /

Dear Ms. Salas:

On May 9 and 10, 2001, I spoke with Paula Silberthau, Attorney, Administrative Law Division, Office of the General Counsel. In my conversations with Ms. Silberthau, I inquired as to whether, in the Order on Remand and Report and Order released April 27, 2001 (FCC 01-131) ("Order") and not yet published in the Federal Register, the FCC believed it had responded to the significant ex parte comments by Level 3 and others with respect to the MOU cap on minutes subject to intercarrier compensation, including the cap applied to providers entering new market (which is the MOU cap calculated using a 0 minute base). I specifically directed Ms. Silberthau to a letter to Ms. Magalie Roman Salas that I filed on behalf of Level 3 on April 10, 2001, including an attached letter from William P. Hunt, III, Vice President – Public Policy, Level 3 Communications, to Dorothy Attwood, Chief, Common Carrier Bureau, dated April 6, 2001. I stated that the Commission's order did not expressly reference those comments or others that objected to the growth cap. However, there were general statements in paragraphs 81 and 86 of the Order that the Commission might have intended to be a general response to the specific points made by these ex parte comments.

I requested that the Commission review the issue of whether it had met, with respect to these comments filed by Level 3 and others, the requirement of the Administrative Procedures Act to respond to significant comments. I further requested that if the Commission determined that it had not met that duty, that it correct this error through a sua sponte reconsideration order. In my conversation on May 10, 2001, Ms. Silberthau told me that the Commission staff would be reviewing the issue.

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Ms. Magalie Roman Salas

May 11, 2001

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In accordance with the rules, this letter is being filed electronically in the above-captioned dockets.

Sincerely,

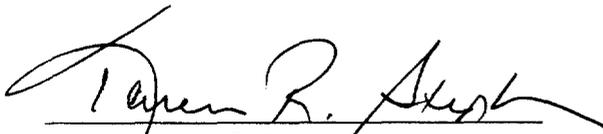
/s/ John T. Nakahata  
John T. Nakahata

c: Ms. Dorothy Attwood, Chief, Common Carrier Bureau  
Mr. Glenn Reynolds, Deputy Chief, Common Carrier Bureau  
Ms. Jane Jackson, Chief, Competitive Pricing Division, CCB  
Ms. Tamera Priess, Deputy Chief, Competitive Pricing Division, CCB  
Ms. Susan Steiman, Associate General Counsel, Admin. Law Div.  
Ms. Linda Kinney, Acting Associate General Counsel  
Ms. Paula Silberthau, Attorney, Admin. Law Division, OGC

**CERTIFICATE OF SERVICE**

I, Karen R. Stephens, do hereby certify that on this 11th day of May 2001, I caused an original and two (2) copies of the foregoing Ex Parte (in each docket) to be served, via hand delivery, upon the following:

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

  
\_\_\_\_\_  
Karen R. Stephens