



1200 EIGHTEENTH STREET, NW
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

September 21, 2004

EX PARTE – Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Implementation of the Local Competition Provisions of the
Telecommunications Act of 1996*, CC Docket No. 96-98;
Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68;

Dear Ms. Dortch:

On September 20, 2004, on behalf of Level 3 Communications LLC (“Level 3”), Ms. Cindy Schonhaut, of Level 3, and I met with Scott Bergmann, Legal Advisor to Commissioner Adelstein. In the meeting, we discussed issues that Level 3 has summarized fully in its previous *ex parte* submissions, including those filed on June 23, 2004 (CC Docket Nos. 96-98, 99-68), June 25, 2004 (CC Docket Nos. 96-98, 99-68; WC Docket Nos. 03-266, 04-36), and September 10, 2004 (CC Docket Nos. 96-98, 99-68). We also discussed the *ex parte* submission filed jointly on behalf of Sprint, Level 3, MCI and AT&T on September 8, 2004 (CC Docket Nos. 01-92, 96-98, and 99-68).

We also stated that, in Level 3’s view, the most appropriate statutory classification of ISP-bound traffic was as “telephone exchange service,” rather than as “exchange access.” The Commission recognized as much in *General Communication Inc. v. Alaska Communications Systems Holdings, Inc.*, 16 FCC Rcd. 2834, 3848 (2001), *affirmed in part and rev’d in part*, *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 (2002), in which the Commission found that ISP-bound traffic was “local exchange service, of which ISP services are a part pursuant to the ESP exemption.” As the D.C. Circuit recognized in *GTE Service Corporation v. FCC*, 224 F.3d 768, 775 (D.C. Cir. 2000), “the Commission may characterize as ‘exchange service’ even services that, like CMRS, do not use exchanges.”

Ms. Marlene H. Dortch
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In accordance with the Commission's rules, I am filing this letter electronically in the docket identified above.

Sincerely,

/s/

John T. Nakahata

Cc: Jane Jackson
Tamara Preiss
Steve Morris
Victoria Schlesinger