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December 10, 2004

EX PARTE – Via Electronic Filing

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

Re: *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

Dear Ms. Dortch:

On December 9, 2004, Bill Hunt and Cindy Schonhaut, of Level 3 Communications ("Level 3"), and I met with Tamara Preiss, Jennifer McKee, Steve Morris, Victoria Schlesinger, Monica Desai and Randy Clark of the Wireline Competition Bureau, Pricing Policy Division, regarding the above captioned proceedings. We provided the staff with a copy of the attached written summary. We urged the Commission to clarify that ISP-bound VNXX traffic is covered by the *ISP Remand Order*.

Indeed, there is no rational basis for treating ISP-bound traffic VNXX traffic differently than any other ISP-bound traffic. The ILEC carries all ISP-bound traffic the same distance, regardless of whether the ISP server is located in the same local calling area as the ILEC's originating calling party or is located in a different local calling area or state. CLECs such as Level 3 that serve ISPs are *not* seeking any *additional* compensation from the ILEC for transport and termination when the ISP's server is not located in the calling party's local calling area. Level 3's ISP customers locate their servers at points they select – including locations serving multistate regions.

ILECs exaggerate the extent to which VNXX traffic "burdens" ILEC shared transport facilities. A common feature of interconnection agreements is the requirement that, above a specified traffic threshold (often two DS-1s), the CLEC will interconnect deeper into the ILEC

network, such as at the end office. These provisions substantially limit any "burden" on ILEC shared transport by excluding higher volume routes.

At bottom, ILEC pleas to treat VNXX ISP-bound traffic differently from all other ISP-bound traffic is simply yet another plea for special relief – to avoid paying the reciprocal compensation rates (or worse, access rates) that ILECs charge all other carriers.

ILEC requests to apply access charges to ISP-bound VNXX traffic are a misbegotten attempt to force ISPs to abandon the economies of scale made possible by the tremendous declines in the price for storage and process, and to force Internet Service Providers to divide their operations according to the antiquated system of geographic exchange boundaries. If ILECs had their way, the only way to operate a dial-up Internet access service would be to forego regional servers, and to locate a server in ever ILEC local calling area. This type of backward-looking, pro-ILEC industrial policy would particularly harm consumers in the rural portions of a LATA by depriving those consumers of the low-priced dial-up Internet access offerings now available in the urban parts of the LATA.

Sincerely,

/s/

John T. Nakahata
Counsel for Level 3 Communications, LLC

Enc.