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Chairman Michael K. Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Jonathan S. Adelstein  
Commissioner Michael J. Copps  
Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

RE: WC Docket No. 03-266, Level 3 Communications Petition for Forbearance;  
WC Docket No. 04-36, In the Matter of IP-enabled Services.

Dear Chairman Powell and Commissioners:

I write in response to the recent letter from the VON Coalition regarding the 2005 Economic Report to the President. The VON Coalition claims, through selective quotation of the Report, that it supports grant of Level 3's forbearance petition. Contrary to the VON Coalition's arguments, however the President's Report demonstrates why that petition should be denied. The Commission should not grant VoIP providers artificial regulatory advantages at the expense of the traditional phone network. As the President's Report emphasizes, "[w]hen government regulation, instead of a competitive process, 'picks the winners,' people tend to lose."<sup>1</sup> Consumers should have the power to decide whether VoIP succeeds in the marketplace, not regulators.

First, the President's Report makes clear that "[r]egulation should adapt to changing market realities in ways that allow innovation to flourish and consumers to choose among alternatives, while ensuring national security, homeland security, law enforcement and public safety."<sup>2</sup> Verizon has been very clear that it strongly supports this Commission's "light touch"

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<sup>1</sup> Council of Economic Advisors, *Economic Report to the President* at 135 (Feb. 2005) ("President's Report")

<sup>2</sup> President's Report at 150.

regulatory approach to VoIP. We are entering an era where new, extraordinarily fast networks deliver video, data, and voice to consumers in entirely new ways. Companies like Verizon are investing billions of dollars in high-speed, multi-megabit networks that will enable two-way, multimedia capabilities, revolutionizing commerce, education, and health care. The Commission took the right first step in its recent *Vonage* order and, in its pending IP-enabled services rulemaking, has an opportunity to create a market based, forward-looking framework that will deliver to consumers the revolutionary transformations that this new technology promises.

The VON Coalition states that “there is no need to impose the regulation born of a monopoly era onto new services.” But granting Level 3’s petition would substantially *increase* the degree of regulation and the regulatory processes that VoIP providers would be subject to. As discussed below, Level 3 is asking the Commission to hold that VoIP traffic is subject to reciprocal compensation rates under the 1996 Act. But the Act provides that reciprocal compensation rates are set by the states. As a result, both incumbent telephone companies and VoIP providers would be subject to intrusive regulatory proceedings in 50 different states to determine the rates, terms, and conditions for VoIP traffic that uses the public switched telephone network (“PSTN”). That is contrary to the interests of VoIP providers and incumbent telephone companies, and is precisely the kind of legacy regulation that should not apply to these services.

Second, the President’s Report is clear that “[w]hen government regulation, instead of a competitive process, ‘picks the winners,’ people tend to lose.”<sup>3</sup> Yet that is exactly what Level 3 asks for – Level 3 seeks to replace the current access charge regime with an entirely novel reciprocal compensation scheme that would grant preferential treatment to only one type of voice long distance calls that use the PSTN – namely, those that originate, or in some cases terminate, in VoIP over a broadband connection on the other end of the call. These calls impose costs on LECs that build and maintain the PSTN, in the same way that traditional circuit-switched long distance calls do. In these circumstances, the Commission’s fundamental “belie[f] that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network”<sup>4</sup> is consistent with the President’s Report; Level 3’s petition is not.

Third, the President’s Report cautions against “subsidiz[ing] an existing service so that more people will consume it.”<sup>5</sup> Again, that is exactly what Level 3 wants – Level 3 is asking the Commission to apply reciprocal compensation rates based on TELRIC to VoIP calls that use the PSTN. These are not “cost-based rates” as the VON Coalition claims. As several commissioners have pointedly noted, TELRIC-priced switching itself results in uneconomic subsidies.

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<sup>3</sup> President’s Report at 135.

<sup>4</sup> Notice of Proposed Rulemaking, *IP-Enabled Services*, CC Docket No. 04-36, FCC 04-28, ¶ 61 (FCC Mar. 10, 2004).

<sup>5</sup> President’s Report at 135.

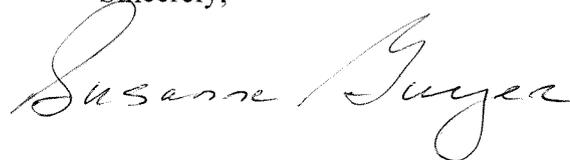
But the effect of granting Level 3's Petition would be even more extreme. It would give VoIP providers the option of paying only the \$0.0007 rate that applies to ISP-bound traffic, rather than TELRIC-based reciprocal compensation rates. Level 3 itself recently conceded in an ex parte meeting before Chairman Powell that this rate is what it expects to pay. The Commission has never found that the rates established in the *ISP Remand Order* are cost-based. Indeed, the Commission has acknowledged that those rates were *not* designed to allow carriers to recover their costs, and it did not seek to justify those rates on that basis: "the rates caps we impose are not intended to reflect the costs incurred by each carrier that delivers ISP traffic."<sup>6</sup>

Moreover, while the VON Coalition argues against application of "legacy access charges" to VoIP services, granting Level 3's petition would result in applying legacy TELRIC-based charges to VoIP services. The Commission has spent much of the last two years disentangling itself from the harmful consequences of requiring local exchange carriers to make available TELRIC priced switching. Yet the effect of Level 3's Petition would ultimately be to reinstate that requirement for one particular type of traffic, despite the harmful consequences that the Commission has found it produced. As the President's Report notes, "Well-meaning policies to promote the diffusion of a service or foster entry into new markets can have unintended consequences."<sup>7</sup>

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The President's Report highlights that in this new era of multiple networks and competitive services, the Commission should not grant artificial regulatory advantages to one class of services over another. "Government efforts to hasten the spread of innovative technologies should focus on lowering regulatory barriers that impede market provision. But government should avoid 'picking winners' among emerging services. Doing so could entrench services that may become outdated as the marketplace evolves and hinder people from choosing the services they truly prefer."<sup>8</sup> Accordingly, Level 3's forbearance petition should be denied.

Sincerely,



cc: Christopher Libertelli  
Matthew Brill  
Scott Bergmann

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<sup>6</sup> *ISP Remand Order*, 16 FCC Rcd at 9156 (¶ 7); *see also id.* at 9190 (¶ 84) ("we make no finding here regarding the actual costs incurred in the delivery of ISP-bound traffic").

<sup>7</sup> President's Report at 135.

<sup>8</sup> President's Report at 153.

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