

February 28, 2005

By Electronic Filing

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

Re: Level 3 Forbearance Petition, WC Docket No. 03-266; IP-Enabled Services, WC Docket No. 04-36

Dear Ms. Dortch:

On February 24, 2005, Mr. David Svanda, spokesman for the VON Coalition, met separately with Mr. Dan Gonzalez, Senior Legal Adviser to Commissioner Martin, and Ms. Jessica Rosenworcel, Legal Adviser to Commissioner Copps. During the course of those meetings, Mr. Svanda made the points summarized in the attached document, as well as the following points:

- **The Level 3 Petition is not piecemeal reform, but a request to have the FCC make clear the “rules of the road”, i.e., “who pays whom” and “how much” for IP-PSTN traffic.** ILECs themselves have no agreement on what access charges apply when, and when reciprocal compensation applies.
- **If rules aren’t made clear by the FCC now, courts will decide years from now the rules that apply *today*, on a piecemeal basis, with retrospective liability.**
- **The Level 3 Petition will not harm universal service.** Level 3 Petition addresses the vast majority of RLECs by exempting them. For the larger ILECs (the non-exempt), there is no evidence that there will be any harm to universal service, and no ILEC has put any numbers on the record to show there will be. The large ILECs all have reported interstate rates of return above the prescribed level of 11.25%. There is no evidence that in light of these earnings the petition will have any impact on universal service. In any event, any claimed impact on universal service can be substantially reduced if the FCC quickly on comprehensive reform.
- **Grant of the Level 3 Petition will speed intercarrier compensation reform.** ILECs will have a greater incentive to find comprehensive solutions. IP services providers will continue to have incentives to support speedy, comprehensive reform.

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- **The Level 3 Petition can be implemented once the rules of “who pays whom” and “how much” are clear.**
- **Level 3 has made clear that it is not seeking asymmetrical compensation, but a symmetrical regime in which all parties pay reciprocal compensation rates for termination of IP-PSTN traffic.**

A copy of this letter is being filed electronically in each of the above-captioned dockets.

Sincerely,



Glenn S. Richards
Counsel for the VON Coalition

Enclosure

cc: Dan Gonzalez
Jessica Rosenworcel

Document #: 1463770 v.1

KEEP INTERNET APPLICATIONS FREE FROM ACCESS CHARGES

Level 3 Petition for Forbearance from Access Charges For IP-PSTN and Incidental PSTN-PSTN IP-Enabled Services FCC WCB Docket No. 03-266

Since access charges were created in the early 1980s, the FCC has consistently kept Internet connectivity to the PSTN and Internet applications free of state and federal access charges. The FCC most recently reaffirmed this deregulatory approach to the Internet in 1997.

As a result, the Internet and IP applications have continued to develop, transforming everyday life at work and at home, in commerce and entertainment, keeping Americans connected in new ways. IP networks power the growth of businesses that no longer have physical offices, enable telecommuting arrangements, and allow far-flung families to share pictures, stories and memories as if they were just down the street.

By March 22, 2005, the FCC must decide whether to keep the Internet and IP applications free from access charges, continuing its pro-growth, pro-consumer approach to new technologies, or whether to change course, and threaten to subject the dynamic and innovative Internet world to a crumbling, legacy access charge system, even while the FCC is trying to reform the old system.

In a petition filed in December 2003, Level 3 Communications asked the FCC to confirm that IP-enabled applications that either originate or terminate on an IP network, and incidental communications, remain outside the scope of the 1980s-era access charge regime, and to forbear from any FCC rules that could even arguably be construed to the contrary. By statute, the FCC must decide, by March 22, 2005 whether to –

- Grant the *Level 3 Forbearance Petition*, and, on an interim basis pending the FCC's completion of comprehensive intercarrier compensation reform, confirm that traffic between a consumer on the traditional public switched network and a consumer on an IP network is exchanged (and compensated) under the 1996 Act's reciprocal compensation mechanism, rather than under the pre-1996 access charge regimes. This is the *de facto* status quo. This ruling would not apply in areas served by small, rural carriers that are exempt from the 1996 Act's local telephone market-opening obligations.
- Threaten to impose an access charge system that is widely acknowledged to need substantial overhaul on IP-based applications for which the access charge system was not designed and will not work.

The benefits of granting the *Level 3 Petition* and keeping the Internet and IP applications free of legacy access charges:

- Consumers benefit from the tremendous innovation in IP-enabled services that has occurred while access charges have not applied. "All-you-can-eat" residential calling packages are now offered for as little as \$19.95 per month, about a third the price at which such services were offered just a year ago.
- Innovative IP-enabled applications, including voice applications, drive broadband adoption. VoIP is broadband's first "killer app" for the mass market.
- The personalization of service that IP makes possible will itself create economic growth as individuals and businesses take advantage of IP's inherent flexibility and capabilities.
- Emergency services such as 911 can be delivered more effectively, and in a more personalized manner, using IP capabilities.
- IP networks and service providers will still compensate PSTN network providers whenever those networks are used to terminate a communication originating on an IP network.

If you want something to grow, don't tax it, or subject it to unnecessary legacy fees. Applying access charges to VoIP suppresses consumer benefits and economic growth in order to prop up a legacy regulatory regime that everybody agrees needs to be fixed. The best approach during the interim – the approach that preserves the economic growth and consumer benefits from IP networks – while the FCC completes intercarrier compensation reform is to leave the Internet and IP applications free of access charges.