

March 1, 2005

Via ECFS

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

Re: Written ex parte presentation
Level 3 Petition for Forbearance: WC Docket No. 03-266

Dear Ms. Dortch:

This letter is in response to the ex parte letter dated February 17, 2005, from Level 3 Communications LLC (“Level 3”), Vonage Holdings Corp. (“Vonage”) and the VON Coalition in support of Level 3’s above-referenced petition for forbearance (the “February 17 Letter”). Sage previously has argued that the Commission should deny Level 3’s petition.¹ The February 17 Letter further demonstrates why the petition would lead to regulatory arbitrage and should be denied.

The February 17 Letter, like Level 3’s petition, attempts to characterize the proposed forbearance request as neutral and even-handed, but in fact the benefits would accrue solely to VoIP providers and the LECs that serve them. If the petition were granted, Sage would be forced to begin *paying* reciprocal compensation for traffic for which Sage currently *collects* access charges. The result would be that residential customers and the LECs that serve them, including CLECs such as Sage,² will be forced to subsidize large business users such as ISPs and the CLECs that serve them. Sage believes that this result is neither in the public interest nor consistent with good competition policy.

As the February 17 Letter points out, if the petition is granted, “Level 3 ... will **not** levy access charges when terminating PSTN-to-IP calls that transit interexchange carriers on their way to IP-end users served by Level 3. To the contrary, Level 3 ... will assess reciprocal compensation charges to terminate such traffic, just as it will pay reciprocal compensation when it originates IP-to-PSTN calls.... Level 3 will *collect* reciprocal compensation for IP-PSTN traffic it terminates, and it will *pay* reciprocal compensation for IP-PSTN traffic it originates. It will not pay or collect access charges for *any* IP-PSTN traffic.”³

¹ See Sage ex parte letter dated Feb. 16, 2005 (WC Docket No. 03-266).

² As the Commission is aware, Sage is a CLECs that focuses on serving residential dial-tone customers in primarily rural and suburban markets.

³ February 17 Letter at 6 (emphasis in original).

Currently, when Sage's residential customers originate interexchange calls, Sage collects originating access charges. Under Level 3's proposal, however, if the number called happens to be used by an IP-based provider, Sage would be precluded from collecting originating access charges for the call. In addition, Sage would be expected to *pay* reciprocal compensation for such calls. Sage also would lose terminating access charges for interexchange calls that originated from IP-based providers. As a result, Sage's residential ratepayers would be required to subsidize large ISPs and the LECs that serve them.

Sage also objects to Level 3's apparent attempt to broaden the geographic area within which reciprocal compensation, rather than access, applies. As the February 17 Letter points out, "Level 3's Petition asks the Commission to confirm a simple rule: when IP-PSTN traffic is exchanged *within the same LATA* between the carrier serving the IP services provider and the carrier serving the PSTN end of the call, reciprocal compensation applies."⁴ Under current rules, however, all interexchange traffic is subject to access charges,⁵ even intraLATA interexchange traffic. Irrespective of whether LECs' interconnection rights are defined by a "single POI per LATA" rule,⁶ there is no precedent for the position that all intraLATA calls are "local" traffic subject to section 251(b)(5), particularly in the largest LATAs (indeed, intraLATA interexchange carriers would be extremely surprised to learn this). Sage also disagrees that taking a "geography-based" view of compensation requirements under the current rules is inconsistent with the Commission's *Vonage Order*.⁷ Rather, Sage believes that Level 3's position is inconsistent with the Commission's policy 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."⁸

Sage agrees with Level 3 on the broad point that intercarrier compensation is an area that requires comprehensive reform. The Commission must, however, resist Level 3's attempt to obtain a near-term regulatory advantage for itself over other classes of carriers – particularly when that advantage would require residential and rural subscribers to subsidize business and urban subscribers, in contravention of sound competition policy.

⁴ February 17 Letter at 5 (emphasis added).

⁵ 47 C.F.R. § 51.701(b)(1).

⁶ See, e.g., February 17 Letter at 4.

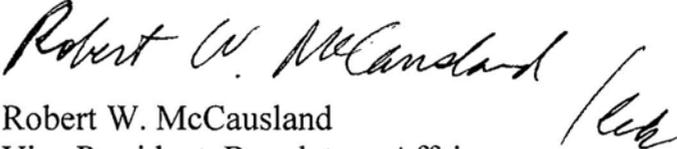
⁷ See February 17 Letter at 4.

⁸ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) at ¶ 61.

Sage ex parte WC Docket No. 03-266
March 1, 2005
Page 3

Consistent with the Commission's ex parte rules, this letter is being filed electronically in the above-referenced docket.

Sincerely,


Robert W. McCausland
Vice President, Regulatory Affairs

cc: Christopher Libertelli
John Stanley
Jessica Rosenworcel
Daniel Gonzalez
Scott Bergmann