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NOTICE AND SUMMARY OF
***EX PARTE* PRESENTATION**

March 4, 2005

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Portals II, Room TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

The attached analysis by National Economic Research Associates, Inc. ("NERA") analyzes the study by QSI Consulting Inc. that was released on February 1, 2005.[1] Level 3 Communications, Inc. ("Level 3") uses the QSI Study in an effort to lull the Commission into granting Level 3's Forbearance Petition by employing creative math to disguise the true measure of harm that would ensue.

The QSI Study is fundamentally flawed and does not even begin to measure the harm that would result if VoIP providers were exempted from their obligation to pay access charges. The NERA analysis shows that the QSI study severely underestimates the impact on access charges—nearly **one billion dollars** of revenue in 2008 alone—even without taking into account a number of other significant deleterious effects that would arise from the special treatment Level 3 seeks, including encouragement of arbitrage and fraud, and diminished rural ILEC access revenues and universal service funding. Therefore, the Commission cannot give credence to Level 3's assurances that giving it, and similarly situated carriers, the requested exemption will not cause substantial injury. Specifically:

- NERA demonstrates that QSI has committed fundamental methodological errors that **understate by over *350%*** the very thing it purports to measure—the effect on switched access charge revenue for non-rural ILECs (QSI excludes rural ILECs from its study). When the errors are corrected, QSI's own model shows that non-rural ILECs would receive $980 million less in revenue in 2008 if Level 3's petition were granted.
- NERA also shows that QSI incorrectly assumed that VoIP demand would increase if reciprocal compensation were applied to terminating exchange access for VoIP-originated calls. It is not at all clear, however, that Level 3's proposed subsidy would

[1] The QSI Study does not appear in either docket on ECFS, and we have been unable to confirm that it has actually been filed in either docket. NERA has analyzed the QSI Study within the structure and context of the QSI model itself, only making corrections and examining sensitivities within that structure. As such, the revised estimates presented in NERA's report do not represent USTA's or NERA's own independent positions regarding the true cost of granting Level 3's forbearance petition. NERA's corrected version of the QSI model is available at www.nera.com.

have this effect as major VoIP providers may not lower their prices. But even if one accepts QSI's dubious assumption, QSI enormously miscalculated its effect on ILEC revenues. If the assumption is applied correctly, ILEC revenues would decrease by another **one billion dollars** in 2008, for a total revenue reduction of over **two billion dollars** in that year alone.

- Finally, even with NERA's corrections, it is clear that the QSI Study **does not capture much of the real harm** from Level 3's proposal, which includes the likelihood of massive arbitrage, encouragement of fraud, rural ILEC revenue losses, reduced universal service contributions, and diminished market performance from artificial competitive subsidies.

These flaws undermine any confidence the Commission could reasonably have in QSI's model. Moreover, the QSI Study does not even begin to address many of the most substantial harms that will ensue should the Commission adopt Level 3's proposal. As a result, the Commission cannot, and should not, rely upon it.

Sincerely,

James W. Olson
Vice President Law and General Counsel

Enclosure

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