



OPASTCO

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March 17, 2005

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

***Ex Parte* Notice**

RE: In the Matter of

**Level 3 Communications LLC's Petition for Forbearance Under 47
U.S.C. 160(c) and Section 1.53 of the Commission's Rules from
Enforcement of Section 251(g), Rule 51.70(b)(1), and Rule 69.5(b)
WC Docket No. 03-266**

Dear Ms. Dortch,

On March 17, 2005, Stuart Polikoff and Stephen Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), Arturo Macias of Wheat State Telephone in Udall, Kansas, and Roger Nishi of Waitsfield Telecom Champlain Valley in Waitsfield, Vermont met with Daniel Gonzalez, Senior Legal Advisor to Commissioner Kevin Martin. We discussed the petition filed by Level 3 Communications LLC that seeks forbearance from the assessment of access charges on Internet Protocol (IP) – Public Switched Telephone Network (PSTN) traffic. OPASTCO recommended that the petition be denied. Instead, the issues raised in Level 3's petition should be addressed in the FCC's comprehensive proceeding on developing a unified intercarrier compensation regime (CC Docket No. 01-92). There is no reason why Level 3 should receive preferential treatment for the long distance traffic that it sends to the PSTN, merely because that traffic originates on an IP network. The use of IP technology to transport a toll call does not reduce a rural incumbent local exchange carrier's (ILEC) cost of providing access services in any way.

Grant of the Level 3 petition prior to comprehensive intercarrier compensation reform would only serve to exacerbate the regulatory arbitrage that the intercarrier compensation proceeding seeks to address. It would give traditional interexchange carriers and wireless carriers every incentive to claim that their long distance traffic was IP originated, and therefore also exempt from access charges. Absent an offsetting universal service mechanism to make up the significant loss in revenue, rural carriers and their customers would be harmed, and the continued deployment of broadband services in rural areas could be hindered.

The “rural carve-out” that Level 3 proposes in their petition is a red herring. The rural exemption established under Section 251(f)(1) of the Telecommunications Act has nothing to do with the applicability of access charges. All rural ILECs are entitled to charge access for the origination and termination of toll traffic under the existing rules, regardless of whether or not they still have their rural exemption and regardless of whether or not the traffic is transported with IP technology. In addition, Level 3 has made no attempt to explain how they would properly identify the traffic destined to rural ILECs that still have their rural exemption so that access charges would apply. The most likely result is that even “exempt” rural carriers would be unable to collect access charges on IP originated traffic.

Grant of the Level 3 petition would contradict several prior FCC statements regarding the future of intercarrier compensation. First, the intercarrier compensation further notice of proposed rulemaking (FCC 05-33) states that any new intercarrier compensation approach must be competitively and technologically neutral. Clearly, permitting carriers that transport toll calls using IP technology to pay lower reciprocal compensation rates while other toll providers pay access charges is neither competitively nor technologically neutral. Similarly, the notice of proposed rulemaking on IP-enabled services (WC Docket No. 04-26, FCC 04-28) states that the cost of the PSTN should be borne equitably among those that use it in similar ways, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. In contrast, grant of the Level 3 petition would establish disparate intercarrier compensation rates among long distance carriers, based solely on the type of network on which the traffic is originated. Finally, the intercarrier compensation further notice states that any proposal that would result in significant reductions in intercarrier payments should include a proposal to address the universal service implications of such reductions. However, the Level 3 petition offers no mechanism for addressing the significant universal service implications of its proposal.

We gave Mr. Gonzalez a copy of the attached letter from members of the Congressional Rural Caucus. The letter urges the Commission to not take a piecemeal approach to intercarrier compensation reform by granting the Level 3 petition.

In accordance with FCC rules, this notice and the attached letter are being filed electronically in the above-captioned docket.

Sincerely,

/s/Stuart Polikoff
Director of Government Relations
OPASTCO