



Jack Zinman  
General Attorney

SBC Services, Inc.  
1401 I Street NW, Suite 400  
Washington, D.C. 20005  
Phone 202 326-8911  
Fax 202 408-8745  
Email jack.zinman@sbc.com

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

Re: Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 03-266.

Dear Ms. Dortch:

SBC Communications, Inc. (SBC) submits this letter to respond to a recent flurry of misleading and self-contradictory *ex parte* filings by Level 3 Communications LLC (Level 3) regarding the above-referenced forbearance petition. With the trade press reporting that Level 3's forbearance petition will likely be denied,<sup>1</sup> Level 3 has now resorted to mischaracterizing Commission precedent and its opponents' arguments in a desperate, last-minute attempt to salvage its petition. But as SBC and numerous other commenters have explained in great detail throughout the course of this proceeding, Level 3's petition was fatally flawed at the outset. SBC urges the Commission to deny Level 3's petition, confirm that its well-established access charge rules apply to IP-PSTN traffic,<sup>2</sup> and proceed expeditiously with comprehensive intercarrier compensation reform. Rather than re-stating each of those arguments in full again here, however, SBC respectfully refers the Commission to the attached appendix, which briefly debunks the myths perpetuated by Level 3 and cites the relevant filings where SBC has already addressed Level 3's claims.

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<sup>1</sup> See *USTA Rebutts Level 3 Access Charge Study*, Communications Daily (March 7, 2005) (quoting a Legg Mason report stating: "We thus expect the FCC to approve the order denying the forbearance petition."); *Wireline*, Communications Daily (March 2, 2005) (citing Medley Global Advisors report suggesting support for Level 3's forbearance petition is "waning.").

<sup>2</sup> We use the term "IP-PSTN" to refer collectively to traffic flowing from Internet Protocol (IP) networks to the Public Switched Telephone Network (PSTN) as well as traffic flowing from the PSTN to IP networks.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

/s/

Jack Zinman

Enclosure

cc: Dan Gonzalez  
John Stanley  
Jessica Rosenworcel  
Scott Bergmann  
Jeffrey Carlisle  
Lisa Gelb  
Tamara Preiss  
Jennifer McKee

## Debunking Popular Myths About Level 3's Forbearance Petition

WC Docket No. 03-266

- (1) **Level 3 Myth:** Applying access charges to VoIP is like a tax on the Internet.<sup>3</sup>

**Reality:** This issue has absolutely nothing to do with taxing the Internet: Level 3 is complaining about the rates it is required to pay for sending VoIP calls *over the PSTN* -- not the Internet. Under Level 3's flawed logic, the rates it pays for electric service, water service, mail service or any other rate-regulated service would be a tax on the Internet. In any event, under the Commission's longstanding rules, Level 3 is subject to access charges when sending IP-PSTN traffic over the PSTN.<sup>4</sup> As the Commission itself stated: "As a policy matter, we believe 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>5</sup>

- (2) **Level 3 Myth:** Forbearance is necessary to provide regulatory certainty.<sup>6</sup>

**Reality:** Granting Level 3's forbearance petition will create tremendous uncertainty because of fundamental problems regarding the identification, routing, rating and billing of IP-PSTN traffic, which are not addressed in Level 3's petition.<sup>7</sup>

- (3) **Level 3 Myth:** Any implementation problems can be easily worked out among providers through "billing disputes," if necessary.<sup>8</sup>

**Reality:** A petition that *intentionally* leaves complex implementation issues to be resolved through *disputes* between ILECs, CLECs, IXCs, VoIP providers, wireless carriers, and other providers is hardly a recipe for "regulatory certainty." Granting Level 3's petition would mire the industry in years of regulatory turmoil and protracted litigation to resolve these disputes.<sup>9</sup>

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<sup>3</sup> Letter from John Nakahata, Counsel for Level 3, to Marlene Dortch, FCC, attachment at 6 (March 15, 2005); Letter from Glenn Richards, Counsel for VON Coalition, to Marlene Dortch, FCC, attachment at 1 (Feb. 28, 2005).

<sup>4</sup> SBC Comments at 9-18; SBC Reply Comments at 5-10; SBC Memorandum in Opposition to Level 3's Forbearance Petition at 2-3 (Feb. 3, 2005) (SBC Memo).

<sup>5</sup> *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 ¶ 61 (2004).

<sup>6</sup> Letter from John Nakahata, Counsel for Level 3, to Marlene Dortch, FCC, at 2-3 (Feb. 17, 2004) (Level 3 February 17 Letter).

<sup>7</sup> Letter from James C. Smith, SBC, to Michael Powell, FCC, at 3-4 (Feb. 3, 2005) (SBC February 3 Letter); SBC Memo at 18-22.

<sup>8</sup> Level 3 February 17 Letter at 7.

<sup>9</sup> SBC February 3 Letter at 3-4; SBC Memo at 2-6, 18-22.

- (4) **Level 3 Myth:** The ESP exemption permits Level 3 to avoid paying access charges on IP-PSTN traffic.<sup>10</sup>

**Reality:** The ESP exemption is limited -- it does not apply where a VoIP provider uses the PSTN to reach a LEC subscriber who receives a telecommunications service. In any event, Level 3 is not purporting to be an ESP; rather, Level 3 is claiming to be a CLEC seeking to send IP-PSTN traffic over a local interconnection trunk. The Commission has *never* suggested that the ESP exemption entitles CLECs to purchase local interconnection trunks for the transmission of IP-PSTN traffic.<sup>11</sup>

- (5) **Level 3 Myth:** The *Vonage Order* precludes the application of intrastate charges to inherently interstate IP-PSTN traffic.<sup>12</sup>

**Reality:** The Commission expressly declined to address intercarrier compensation issues in the *Vonage Order*.<sup>13</sup> Moreover, Level 3's claim about the *Vonage Order* contradicts its own arguments about the ESP exemption: if the ESP exemption applies as Level 3 argues (and it does not), Level 3 would be able to purchase local business lines or local interconnection trunks for IP-PSTN traffic – both of which are subject to rates set by *state* commissions.

- (6) **Level 3 Myth:** Granting the forbearance petition would not result in an asymmetrical compensation regime for IP-PSTN traffic that allows CLECs to pay reciprocal compensation for VoIP-to-PSTN calls while still receiving access charges for PSTN-to-VoIP calls.<sup>14</sup>

**Reality:** While Level 3 *voluntarily* agrees not to impose access charges on PSTN-to-VoIP calls itself,<sup>15</sup> Level 3 *admits* that its petition, if granted, would not preclude other CLECs from imposing access charges on PSTN-to-VoIP calls.<sup>16</sup>

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<sup>10</sup> Level 3 Reply Comments at 39-55; Letter from John Nakahata, Counsel for Level 3, to Marlene Dortch, FCC, at 1-2 (March 4, 2005) (Level 3 March 4 Letter).

<sup>11</sup> SBC Comments at 9-18; SBC Reply Comments at 7-10; SBC Memo at 2-3; Letter from Jack Zinman, SBC, to Marlene Dortch, FCC (Feb. 17, 2005).

<sup>12</sup> Letter from John Nakahata, Counsel for Level 3, to Marlene Dortch, FCC, at 2-3 (March 3, 2005) (Level 3 March 3 Letter).

<sup>13</sup> SBC Memo at 9 n.14.

<sup>14</sup> Letter from John Nakahata, Counsel for Level 3, to Marlene Dortch, FCC, at 3 (Feb. 14, 2005) (Level 3 February 14 Letter); Level 3 February 17 Letter at 6.

<sup>15</sup> Level 3 February 14 Letter at 3 (“Level 3 bills . . . at the reciprocal compensation rate . . . .”); Level 3 February 17 Letter at 6 (“Level 3 explained that it will not levy access charges when terminating PSTN-to-IP calls . . .”).

<sup>16</sup> Level 3 February 14 Letter at 15 n.66 (“Level 3 has explained that its Petition applies to PSTN-to-IP calls *only* when the originating LEC hands the call directly to the CLEC serving the IP provider. . . . Some mechanisms would be necessary between the IXC and the LEC serving the VoIP provider to ensure that the LEC was billing reciprocal compensation and not access charges for these minutes.”) (emphasis added).

- (7) **Level 3 Myth:** Granting Level 3's petition will not harm universal service because VoIP is not growing fast enough to significantly affect ILEC access revenues.<sup>17</sup>

**Reality:** Level 3's attempt to downplay the growth of VoIP to this Commission cannot mask the facts: The tremendous growth potential of VoIP is universally recognized and, in fact, has been touted by Level 3 itself to the investment community.<sup>18</sup>

- (8) **Level 3 Myth:** VoIP providers will have difficulty offering consumers low prices for VoIP service if access charges are applied.<sup>19</sup>

**Reality:** While Level 3 is telling the Commission that it needs an artificial pricing advantage to make VoIP attractive to consumers, it is simultaneously telling Wall Street a completely different story: "[P]otential buyers view heavily discounted services with skepticism. We believe these findings point to value and consistent service quality, rather than 'rock bottom prices,' as the primary drivers of mass market VoIP adoption."<sup>20</sup>

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<sup>17</sup> Letter from John Nakahata, Counsel for Level 3, to Marlene Dortch, FCC, attachment at 8-9 (Feb. 24, 2005).

<sup>18</sup> *U.S. Consumers Open to Switching to Internet Phone Service – Research Study Shows 71 Percent of Respondents Would Consider Move to VoIP*, Level 3 Press Release, <http://www.level3.com/press/5754.html> (March 7, 2005) (“Our survey results highlight the immense interest that Internet calling is generating among U.S. consumers,” said Cynthia Carpenter, vice president of marketing for VoIP services at Level 3.”)

<sup>19</sup> Letter from John Nakahata, Counsel for Level 3, to Marlene Dortch, FCC, at 1-2 (Jan. 31, 2005).

<sup>20</sup> *U.S. Consumers Open to Switching to Internet Phone Service – Research Study Shows 71 Percent of Respondents Would Consider Move to VoIP*, Level 3 Press Release, <http://www.level3.com/press/5754.html> (March 7, 2005)