ROCKRIDGE

CAPITAL PARTNERS

March 10, 2005

EX PARTE - VIA ELECTRONIC FILING

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

Re: *Level 3 Petition for Forbearance*, WC Docket 03-266

Dear Ms. Dortch:

RockRidge Capital Partners, Inc. (the "Company") files this letter to support Level 3 Communications' (Level 3's) Petition for Forbearance (the "Petition") filed with the FCC in WC Docket No. 03-266.[1] RockRidge Capital Partners, Inc. is a Venture Capital firm specializing in early stage venture capital with a focus on the Software, Infrastructure and Service sectors.

The Company urges the Commission to grant Level 3's Petition. IP services are inherently competitive services. Left unhindered, these services will drive overall growth in the American communications industry. Moreover, IP-based services will drive broadband adoption, especially in rural areas, and will enable low income households to obtain advanced communications services at competitive prices. The Commission should both clarify that access charges do not apply to IP to PSTN traffic (and vice versa), and address retroactivity in any decision it makes. By doing so, the Commission will provide the regulatory clarity and certainty needed by investors to increase capital funding in IP technologies and the communications sector generally.

1. The Commission Should Grant the Level 3 Petition to Provide Regulatory Certainty

The Commission should grant Level 3's Petition. The Company believes that imposing access charges on Internet Protocol (IP) traffic would add a considerable uneconomic burden to the recently-troubled communications sector. Giving direction to all carriers that IP traffic should fall under the reciprocal compensation system, rather than state and federal access charge systems, will create a more efficient market, and help new carriers enter the market with some modicum of regulatory certainty. This certainty will also allow venture capitalists and other

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[1] *See 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 03-266 (filed Dec. 23, 2003) (the Level 3 Petition).

investors to make informed decisions on whether to supply capital to companies providing IP technologies or services.

2. Unconstrained IP Services Are Competitive Services Unsuited for Traditional Regulation

Unconstrained IP-enabled services are competitive services by nature. Americans can reach the Internet (using dial-up technologies) through numerous Internet Service Providers. As broadband penetration and competition grows, high-speed Internet access will become more ubiquitous and less costly for consumers. Voice and other applications over those Internet connections will likewise continue to grow and develop, promoting additional broadband deployment and adoption. Hundreds of companies are now attempting to offer some form of IP-enabled services in a multitude of applications (voice, data, video, access, etc.). Over time, this market will drive down prices and increase service quality. In fact, several companies, including Vonage, decreased prices for their IP-based service offerings in 2004. More competition in the United States IP market will also enhance US competitiveness in the global market, as the Internet knows few jurisdictional boundaries. Several companies are now providing IP services on an international scale, and we expect to see more providers entering this global market over the next several years.

3. Left Unhindered, IP Services Will Drive Growth in the Communications Industry

The Company believes IP-enabled services will revolutionize the communications industry in the United States. Clearly, voice over IP and other IP-enabled services made significant market gains in 2004, and the Company fully expects this growth to continue for the foreseeable future. The Company agrees with Merrill Lynch's[2] conclusion that IP-enabled services will eventually dominate the voice telecommunications market in the United States. However, this vision will not be realized if the technology is hindered by burdensome and unnecessary regulatory controls—controls that were devised for monopoly-era technologies and services.

4. Granting Level 3's Petition Will Advance the FCC's Broadband Agenda

The Company also believes that granting Level 3's Petition will advance the Commission's policy of universal availability of broadband access, as IP-enabled services clearly drive broadband Internet access deployment and consumer uptake of these services. Millions of Americans, many of which are in rural areas, still have no access to affordable broadband

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[2] The report issued by Merrill Lynch was entitled *Everything Over IP* (March 12, 2004). The Company also notes that several independent VoIP firms, such as Vonage, saw significant financial and employment growth during 2004. Vonage's growth is documented in the company's press releases, which are available at: http://www.vonage.com/corporate/press_index.php.

connections. Moreover, those that have broadband access are normally limited to the local cable company or ILEC. These companies often leverage their broadband market dominance by packaging DSL or cable modem services with other service offerings (local and long distance telephone service or cable television service). Failure to take broadband services packaged in this way normally increases broadband prices to levels out of the reach of many rural and low income consumers. However, IP-enabled services will likely drive broadband penetration and competition. This will reduce prices for broadband access services, which in turn will drive the American economy and benefit American consumers with new IP-based service offerings. As such, the Commission should take this opportunity to free IP services from traditional economic common carrier regulations, and help create an atmosphere where demand for broadband and IP-enabled services increase investment in the communications market.

5. The Level 3 Petition Is the Next Logical Step Following the *Vonage Order*

The Company, along with many others in the investment community, applauded the Commission's *Vonage Order.*[3] In that Order, the FCC provided some guidance to the industry on the proper scope of state regulation of IP services. However, the *Vonage Order* did not address whether access charges could be applied to IP traffic. This continued uncertainty reduces investor willingness to invest much needed capital in this technology. Investors are also more wary of investing in the communications sector as a whole. This unease will continue until the Commission makes a final determination on the economic treatment of IP-enabled services. Level 3's Petition will provide needed certainty and spur continued deployment and development of IP technology.

6. The Commission Should Address Retroactivity in Any Decision It Makes

The Company also believes that Level 3's Petition does not go far enough. The Petition omits discussion of whether access charges can be applied to IP traffic *retroactively*. Unlike the Commission's *AT&T Order,*[4] the FCC should take this opportunity to directly address this issue. The Company understands that there are already several lawsuits underway claiming that AT&T must pay retroactive access charges on its IP traffic. These suits, and litigation expenses, could have been avoided had the Commission squarely addressed the issue. In Level 3's case, should

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[3] The Vonage Order stopped states from imposing some common carrier regulations on Vonage's services. We believe this has stopped other states' efforts to regulate Vonage's service, turn preventing additional lawsuits on this issue. *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order (rel. Nov. 12, 2004) (the *Vonage Order*).

[4] The Commission's *AT&T Order* addressed the prospective application of access charges, but failed to address whether such charges could be applied by carriers retroactively. *See Petition for Declaratory Ruling that AT&T's Phone-to Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (rel. Apr. 21, 2004) (the *AT&T Order*).

the Commission determine that access charges do not apply to traffic between the IP and PSTN networks, that determination should apply retroactively. Failure to do so will continue to fuel the legal uncertainty surrounding such charges, which will in turn lead to financial uncertainty for Level 3 and other service providers affected by the Commission's ultimate determination.

For the reasons stated, the Company supports Level 3's Petition. The Commission should take the steps necessary to lend more legal, economic and regulatory certainty to IP-enabled services and the communications market as a whole. Subjecting IP services to access charges would stifle innovation and competition, and would therefore reduce investment in this sector of the economy. We hope that the FCC takes positive action on Level 3's Petition soon, and that the Commission lends enough guidance in its decision (such as whether its determination is retroactive) for the investment community to make informed decisions when investing in IP technology and the communications market.

Sincerely,

William J. Marshall
Managing Partner
RockRidge Capital Partners, Inc.