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March 15, 2006

Ex Parte

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

Re: Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket 04-440

Dear Ms. Dortch:

I am writing to respond to the *ex parte* letter that Level 3 filed on March 10, 2006 in the above-referenced proceeding.¹ Level 3 generally repeats already discredited arguments that Verizon's petition is procedurally and substantively deficient. To the extent Level 3 raises new arguments against the petition, those arguments also are wrong.

As an initial matter, Level 3 concedes (at 6) that there is intense competition for the broadband services at issue here, which has caused prices for these services to "drop[] substantially." According to Level 3 (at 5-6), "between 2002 and 2005 . . . for IPVPN OC12 prices dropped more than 87%, while IPVPN DS1 prices dropped approximately 65% and OC12 private line pricing dropped almost 55%." This should be the end of the matter.

Level 3 nonetheless complains (at 3) that Verizon fails to provide competitive data "on a market-by-market basis and provides only general nationwide market data." But as we have explained, the Commission has previously made findings of non-impairment for packet-switching and OCn-level services on a national basis, and has also found that mandatory Title II regulation was not appropriate for wireline broadband Internet access and related transport services based on a nationwide showing of competition for those services. *See Triennial Review Order* ¶¶ 202, 537-541; *Wireline Broadband Order* ¶¶ 47-64; Verizon Reply Comments at 16-18. Moreover, the case for relying on national data is particularly compelling with respect to the services at issue here because they are purchased primarily by large business customers, a segment that is national in scope. Indeed, as we explained, the bulk of Verizon's market share for these services derives from the former MCI's customer base, which is spread throughout the country. *See February 7 Letter* at 12.²

¹ *See Ex Parte Letter from Adam Kupetsky, Level 3, to Marlene Dortch, FCC, WC Docket No. 04-440 (FCC filed Mar. 10, 2006) ("Level 3 Letter").*

² *See Ex Parte Letter from Dee May, Verizon, to Marlene Dortch, FCC, WC Docket No. 04-440 (FCC filed Feb. 7, 2006) ("February 7 Letter").*

Despite its acknowledgement of substantial price competition, Level 3 claims (at 2) that “[i]n many cases . . . Verizon is the only option for obtaining the high capacity (including OC-n) channel terminations necessary to serve Level 3’s customers.” Level 3 fails, however, to provide a *single example* of where this is the case. Thus, Level 3 provides no basis to overturn the Commission’s determination that competing carriers are not impaired with respect to OCn level facilities. See *Triennial Review Order* ¶¶ 537-541. Level 3 suggests (at 5) that the Commission’s decision should be ignored, because in eliminating OCn-level UNEs the Commission “relied heavily on CLECs’ ability to access and use dark fiber UNEs to self-provide OC-n level services,” but subsequently “eliminated such access” in the *Triennial Review Remand Order*. But as Level 3 neglects to mention, the Commission’s decision to eliminate dark fiber UNEs was based on record evidence demonstrating that “barriers to entry relating to the deployment of dark fiber loops can be overcome through self-deployment of lit facilities at the OCn level.” *Triennial Review Remand Order* ¶ 182. Thus, the Commission’s decision to eliminate such access further confirms that the relief requested here is warranted.

Level 3 also claims that Verizon’s petition is overbroad in light of the more limited relief the Commission recently granted in the *Fast Packet Order*.³ There, the Commission held that Verizon would be required to satisfy the Phase II pricing flexibility triggers in order to obtain Phase II relief for its packet-based advanced services. But the Commission also expressly acknowledged that its decision was not addressing the broader deregulation issues that were under review in other proceedings. As the Commission explained: “our grant of a waiver to allow Verizon limited pricing flexibility relief based on the record here is not intended in any way to detract from a full and fair consideration of whether advanced services should receive broader ‘non-dominant’ regulatory treatment in the future.” *Fast Packet Order* ¶ 14. Also, in that earlier context, Verizon relied on its previous pricing flexibility filings showing competition for special access services generally, and did not make an independent showing of competition for fast packet services. Here, by contrast, Verizon has demonstrated that there is extensive competition for the specific broadband services at issue, and that regulation of such services is therefore unnecessary.

Finally, Level 3 argues (at 1) that Verizon’s petition should be rejected “on procedural grounds,” because Verizon only recently clarified the services for which it is seeking forbearance and the types of regulation to which such forbearance should apply. But Verizon provided service definitions and specific claims for relief in its original petition. See Verizon Petition at 1-2, 13-23. The more recent clarification – filed more than five weeks ago – was not an attempt at “gamesmanship” as Level 3 claims, but instead was filed to provide additional detail in light of the *Wireline Broadband Order*.

Please let me know if you have any questions.

Sincerely,



cc: B. Childers
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³ *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services*, Memorandum Opinion and Order, WC Docket No. 04-246, FCC 05-171 (FCC rel. Oct. 14, 2005) (“*Fast Packet Order*”).