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ATTORNEYS AT LAW

March 17, 2006

Via Electronic Filing

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

Re: Verizon Petition for Forbearance, WC Docket No. 04-440

Dear Ms. Dortch:

I am writing in response to the letter of Dee May, Vice President, Federal Regulatory, Verizon, dated March 15, 2006.

Verizon's letter misquotes and misrepresents a point that Level 3 made in its ex parte letter dated March 10, 2006.[1] Verizon's letter quotes Level 3 as saying, "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%." The ellipsis, however, changes the entire meaning of this sentence. What Level 3 actually said was:

> "Indeed, between 2002 and 2005, ***prices for services for which Verizon's OC-n special access services are an input dropped substantially reducing the ability of Verizon's special access customers to economically justify building alternative facilities:*** for IPVPN OC12 prices dropped more than 87%, while IPVPN DS1 prices dropped approximately 65% and OC12 private line pricing dropped almost 55%." (emphasis added)

The text that Verizon carefully excised makes clear that the prices Level 3 was discussing were the declining prices that could be obtained for services (including interexchange services) provided *using* the Verizon OC-*n* special access for which Verizon has sought forbearance (or using the more costly, uneconomical alternative of constructing to customer premises), not prices that Verizon could get for services that compete with Verizon's special access services. Verizon is trying to use competition in a downstream market to justify deregulation of an upstream input for which it has provided no specific evidence that it lacks market power in any relevant geographic market. Indeed, before it can grant Verizon's petition, in order to evaluate the impact

[1] Ex Parte Letter from Adam Kupetsky, Level 3, to Marlene Dortch, FCC, WCB Docket No. 04-440 (filed March 10, 2006).

of the requested forbearance on competition and the public interest, the Commission must evaluate the likelihood of a price-margin squeeze if forbearance were to be granted.

Verizon also claims that it specified the services for which it sought forbearance in its initial petition. But, in fact, Verizon's Petition appeared to exclude "broadband services offered over its fiber-to-the premises ("FTTP") networks and other packet-switched services such as ATM and Frame relay." Verizon noted that those services were the subject of then-pending forbearance petitions. In the instant Petition, Verizon requested "forbearance from traditional common carriage requirements" (whatever that means), but only "to the extent that it is not covered by Verizon's previous petitions."[2] The most natural reading of Verizon's Petition is that it did not reach ATM, Frame Relay and OC-n FTTP services, which, at that time, were the subject of another petition. Verizon did not clearly specify that these services were subject to its Petition until its February 7, 2006 letter.

Verizon's attempt to distinguish the *Fast Packet Order* also fails. Although the Commission said it was not foreclosing a future grant of non-dominant status, it did not say that such status could be granted without a market-by-market showing in each relevant geographic market. Verizon has still not provided any explanation of why, for these special access services, all customer locations nationwide face the same high level of competitive choices, when Verizon does not even have pricing flexibility for all of these services nationwide. The point Verizon does not address is that the MSA-by-MSA competitive showing that the Commission affirmatively required in the *Fast Packet Order* prior to granting Phase II pricing flexibility, and its reasons for affirmatively denying ILEC requests for automatic grants of such pricing flexibility, cannot be logically or analytically reconciled with granting the even-greater flexibility Verizon now requests without such a geographically specific showing.

Respectfully submitted,

/s/ John T. Nakahata

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Its Counsel

Dated: March 17, 2006

[2] Verizon Petition at 2.