



March 17, 2006

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**Ex Parte**

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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 17, 2006 in the above-referenced proceeding.<sup>1</sup> Level 3 responds to three points in Verizon's March 15 letter,<sup>2</sup> but misses the mark on each one.

First, Level 3 claims (at 1) that we "misquote[d] and misrepresent[ed]" Level 3's statement that the retail prices for some of the broadband services at issue here have declined. We did no such thing. Level 3's March 10 letter conceded that "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%."<sup>3</sup> Level 3 claims (at 1) that the portion of the quote we left out makes clear that the prices it was describing were for downstream (*i.e.*, retail) services "providing using the Verizon OC-n special access for which Verizon has sought forbearance," and that is inappropriate "to use competition in a downstream market to justify deregulation of an upstream input for which [Verizon] has provided no specific evidence that it lacks market power." This is economically incoherent, contrary to the Commission's prior findings, and inconsistent with the statute.

If, as Level 3 concedes, retail prices for the broadband services at issue are declining "substantially,"<sup>4</sup> it must mean that there is intense competition for these services, which in turn means that competitors are able to supply themselves or otherwise obtain the inputs used to provide these services on reasonable terms. In fact, the inputs about which Level 3 complains are "OC-n special access," and the Commission has already found that for this level of capacity there already is extensive competitive supply and that competitive carriers "are often able to economically deploy these facilities to the large enterprise customers which use them." *Triennial Review Order* ¶ 315. In

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<sup>1</sup> See Ex Parte Letter from John Nakahata, Harris, Wiltshire & Grannis, LLP, to Marlene Dortch, FCC, WC Docket No. 04-440 (FCC filed Mar. 16, 2006) ("*Level 3 Letter*").

<sup>2</sup> See Ex Parte Letter from Dee May, Verizon, to Marlene Dortch, FCC, WC Docket No. 04-440 (FCC filed Mar. 15, 2006).

<sup>3</sup> Ex Parte Letter from Adam Kupetsky, Level 3, to Marlene Dortch, FCC, WCB Docket No. 04-440, at 5-6 (filed March 10, 2006).

<sup>4</sup> *Id.* at 6.

any event, section 10 provides that forbearance is appropriate where regulation “is not necessary for the protection of *consumers*.” 47 U.S.C. § 160(a)(2)(emphasis supplied). Given that retail prices for the broadband services at issue have declined substantially, this standard is met.

Second, Level 3 repeats (at 2) its claim that we did not provide adequate specification of the broadband services for which we are seeking forbearance in our original petition, and only provided that detail in our February 7, 2006 letter. Level 3 further claims (at 2) that “[t]he 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.” In point of fact, Verizon’s petition requested relief for “*any* broadband services offered by Verizon,” to the extent “not covered by Verizon’s previous petition.” See Verizon Petition at 1-2 (emphasis added). Although one of Verizon’s previous petitions requested limited relief for ATM, Frame Relay and certain other services on an interim basis, *see id.* at 2 & n.5, the relief sought here went well beyond the scope of that earlier petition. Indeed, in granting the relief sought in that earlier petition, the Commission recognized that it was considering the question whether broader relief for ATM and Frame Relay services was appropriate. See *Fast Packet Order* ¶ 14 & n.67.<sup>5</sup> Moreover, Verizon’s petition specifically discussed competition for ATM and Frame Relay services, which should leave no doubt that its original request encompassed these services. See Verizon Petition at 7.

Finally, Level 3 argues that the Commission’s decision to require MSA-by-MSA showings in the pricing flexibility context cannot be reconciled with Verizon’s request for nationwide relief for the services at issue. But as we have repeatedly explained, the Commission has already found that there is extensive competition for the packet-switched and OCn-level services at issue on a nationwide basis, *see Triennial Review Order* ¶ 202 (finding no impairment for OCn-level services nationwide), ¶¶ 537-541 (finding no impairment for packet-switched services nationwide), and there is accordingly no need to conduct more granular geographic analysis here, *see USTA II*, 359 F.3d 554, 586-587 (D.C. Cir. 2004) (upholding Commission’s determination of nationwide non-impairment for enterprise switching, despite Commission’s decision not to conduct a market-by-market analysis). We have also demonstrated that the services at issue are often national in scope, and that Verizon’s market share for these services is made up principally of the former MCI customer base that is spread throughout the country, and Level 3 has failed to provide any evidence to rebut this showing.

Please let me know if you have any questions.

Sincerely,



cc: B. Childers  
G. Cohen  
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D. Shaffer

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<sup>5</sup> *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*”).