

Tamar E. Finn  
Direct Phone: 202.373.6000  
Direct Fax: 202.373.6001

October 29, 2009

**VIA ELECTRONIC FILING**

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

Re: Notice of Ex Parte Communication; In the Matter of Emergency Request and Petition for Stay Pending Commission Review by Level 3 Communications, LLC et al., WC Docket No. 06-122

Dear Ms. Dortch:

On October 28, 2009, on behalf of Level 3 Communications, LLC (“Level 3”) the undersigned met via teleconference with Christi Shewman, Wireline Legal Advisor to Commissioner Meredith A. Baker. The teleconference was a follow-up and in response to inquiries made by Ms. Shewman during our meeting held on September 23, 2009, where the participants discussed Level 3’s pending Request for Review of a Universal Service Administrative Company (“USAC”) Decision.

During the teleconference, Level 3 explained that USAC follows a “pay and dispute” policy, which requires appellants to pay disputed universal service contributions while a dispute is pending. See <http://www.universalservice.org/fund-administration/contributors/file-appeal/>. This policy is solely USAC’s and, while it generally supports the policy, the FCC has never adopted a pay and dispute policy by rule or order. Moreover, USAC is prohibited by FCC rules from making policy. 47 C.F.R. §54.702(c).

In 2005, the Commission sought comment on codifying USAC policies and adopted certain of these policies as rules. In an appendix to its comments, USAC described its policy that requires contributors making mistakes on their 499 filings to pay the amount billed and await for relief through USAC’s true-up process. Universal Service Administrative Company, Comments in Docket 05-195, App. A, at 12 (Oct. 18, 2005) (“Contributors that over-report revenue but miss the 45-day revision window must pay the resulting higher billings and await relief provided by the annual true-up which could occur as much as 18 months later.”). The Commission did not codify this USAC policy. To the contrary, in every instance in which the FCC has referred to “pay and dispute,” it has characterized it as a “USAC principle” or “USAC policy.” See *Universal Service Contribution Methodology, Requests for Waiver of Decisions of the Universal Service Administrator by Achieve Telecom Network of Massachusetts, LLC, et al*, Order, WC Docket No. 06-122, 23 FCC Rcd 17903, ¶9 (December 15, 2008), *application for review pending* (“USAC’s pay and dispute policy” and “USAC’s policy requires”); *Request For*

Boston  
Hartford  
Hong Kong  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Santa Monica  
Silicon Valley  
Tokyo  
Washington

Bingham McCutchen LLP  
2020 K Street NW  
Washington, DC  
20006-1806

T +1.202.373.6000  
F +1.202.373.6001  
bingham.com

A/73183258.1

Ms. Marlene H. Dortch, Secretary  
October 29, 2009  
Page 2

*Review by InterCall, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, 23 FCC Rcd 10731, n.17 (June 30, 2008) (“general USAC principle of ‘pay and dispute’”); *Federal-State Joint Board on Universal Service, Universal Service Contribution Methodology, Aventure Communications Technology, LLC, Form 499 Filer ID: 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, Order, CC Docket No. 96-45, WC Docket No. 06-122, 23 FCC Rcd 10096, ¶5, n.16 (June 26, 2008) (“USAC’s ‘pay and dispute’ policy”); Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau to Scott Barash, Universal Service Administrative Company, DA 08-1447, 23 FCC Rcd 9571 (June 19, 2008) (“USAC’s general ‘pay and dispute’ policy”); Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau to Scott Barash, Universal Service Administrative Company, DA 08-602, 23 FCC Rcd 4705 (March 24, 2008) (“USAC’s general ‘pay and dispute’ policy”); *Federal-State Joint Board on Universal Service Request for Review by WorldxChange Corp. of Action by Universal Service Administrator*, Order, CC Docket No. 96-45, 22 FCC Rcd 5082, Appendix A (March 16, 2007) (USAC maintains a ‘pay and dispute’ policy”).

Level 3 acknowledged that pay and dispute is an important policy, but argued that the facts and circumstances of its case warrant equitable relief from this USAC policy.<sup>1</sup>

Sincerely yours,

*/s/ electronically signed*

Tamar E. Finn

cc (by e-mail):

Christi Shewman  
Sharon Gillette  
Priya Aiyar  
Christine Kurth  
Jennifer Schneider  
Carol Simpson

<sup>1</sup> See Level 3 July 31 *ex parte* (arguing that Level 3 notified USAC and the FCC of the mistake in its reported revenues before the invoice due date and filed its appeal on the due date, Level 3 filed its downward revision within the Commission’s one-year filing deadline, USAC did not post notice of its form processing deadline on its website until after Level 3 filed its appeal, Level 3 paid what it accurately owed in USF contributions, third quarter 2008 contributions were higher than projected such that Level 3’s actions did not put the fund in danger, and other government agencies include pay and dispute requirements in their rules and provide interest on overpayments that are refunded to an appellant).

Ms. Marlene H. Dortch, Secretary  
October 29, 2009  
Page 3

Julie Veach  
Alexander Minard  
Vickie Robinson