

November 10, 2009

**Ex Parte**

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

Re: *A National Broadband Plan for our Future*, GN Docket No. 09-51; *International Comparison and Survey Requirements in the Broadband Data Improvement Act*, GN Docket No. 09-47; *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137; *IP-Enabled Services*, WC Docket No. 04-36; *Federal-State Joint Board on Universal Support*, CC Docket No. 96-45, *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52

Dear Ms. Dortch:

On Monday November 9<sup>th</sup>, 2009 and Tuesday, November 10<sup>th</sup>, 2009 James Crowe, CEO of Level 3, John Ryan, Level 3's Assistant Chief Legal Officer, and I met with the following:

- Commissioner Copps and Jennifer Schneider, Wireline and Universal Service Legal Advisor to Commissioner Copps,
- Commissioner McDowell, Angela Giancarlo, Chief of Staff and Senior Legal Advisor, Wireless and International to Commissioner McDowell and Christine Kurth, Policy Director and Wireline Counsel to Commissioner McDowell,
- Commissioner Clyburn and Rich Kaplan, Legal Advisor, Media and Chief of External Affairs to Commissioner Clyburn and
- Commissioner Baker and Christine Shewman, Legal Advisor for Wireline and Universal Service to Commissioner Baker.

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The presentations are summarized in the attachment, a copy of which was provided to the attendees.

Please contact me if you have any questions.

Sincerely,



John T. Nakahata  
*Counsel to Level 3 Communications, LLC*

## **Thoughts on Universal Internet Access**

### **Level 3 Communications, Inc.**

**1. The federal government should define Universal Internet Access, not in terms of bandwidth speed and performance criteria, but rather as a right to participate in evolving online communities.**

- A suggested statement of such a right might be:

*As soon as reasonably possible, all Americans, without regard to their economic means or geographic location, should have access to affordable broadband Internet access service sufficient to enable effective participation in online political, educational, social and commercial communities.*

- The bandwidth speed and performance required to effectively participate in the online communities increases, at times quite rapidly, as visual and dynamic media replaces aural and static content.
- The federal government should define the process employed to both determine a Universal Internet Access initial target speed and to subsequently update this target as Internet applications and content evolve.
- Today, an affordable and universally available broadband Internet access service providing an effective downstream throughput of 1 Mbit/s to 2 Mbit/s and an effective upstream throughput 250 kbit/s to 500 kbit/s may be reasonably sufficient to meet initial Universal Internet Access goals.

**2. The federal government should mandate access service provider reporting as necessary to measure progress in meeting Universal Internet Access targets and to improve policies and programs aimed at meeting these goals.**

- There are no broadly agreed metrics which measure the current state and ongoing development of Internet access.
- If such metrics were defined, there is no effective mechanism to acquire and analyze such data.

**3. The federal government should develop and implement policies and programs which effectively combine both service provider incentives and subscriber subsidies reasonably necessary to accomplish Universal Internet Access goals.**

- Technology and service provider neutral subsidies should be provided to those who cannot afford broadband service.
- Given the current structure of the Internet access market, any practical plan to achieve Universal Internet Access requires the positive cooperation of wired and wireless broadband access service providers.

**4. Regulatory scrutiny should generally focus on broadband access services.**

- Consumer broadband Internet access services are generally provided over an end-to-end infrastructure composed of
  - wired and wireless broadband Internet access facilities,
  - internet backbone facilities and
  - high capacity connections to facilities of content and application providers.
- The latter two sets of facilities are robustly competitive, service elements are unbundled and purchases are generally made by enterprises with substantial buying power.
- Broadband access services are often bundled with devices and content, and are generally purchased by individual consumers with more limited choices when compared to other Internet facilities.

**5. Regulation, including net neutrality, should be explicitly developed and promulgated only as necessary to support universal Internet access targets and to preserve access to lawful applications and content.**

- Given the rapid development of the Internet ecosystem, there is a tension between market based innovation, and the pace of legal and regulatory processes.
- In general, regulatory intervention should be limited to that necessary to achieve the universal Internet access targets, and to preserve access to the broad range of content and applications available to Internet users.