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Via ECFS

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

**Re: EXPARTE
WC Docket No. 06-122-Petition of Nebraska Public Service
Commission and Kansas Corporation Commission for
Declaratory Ruling**

Dear Ms. Dortch:

Level 3 Communications, LLC (“Level 3”) submits this letter regarding the Petition for Declaratory Ruling filed by the Nebraska Public Service Commission and Kansas Corporation Commission concerning the possible assessment of state Universal Service Fund contributions on the intrastate revenue of nomadic VoIP providers.

Level 3 expresses no opinion on the basic question of whether nomadic VoIP revenue should be subject to state Universal Service contributions. However, Level 3 wishes to express two concerns that have not been addressed in the record and that highlight how this proceeding affects not only providers of VoIP services, but also their underlying suppliers as well. If the Commission is inclined to grant the petition, Level 3 urges narrow and prospective action, and to be mindful of the consequences that any Order could have on carriers who provide services to VoIP providers.

The Commission should make clear that to the extent that it will permit states to assess a Universal Service contribution on VoIP providers, such assessments are to be only on the ultimate provider of VoIP services, and not on the underlying carriers who provide services to VoIP providers. Otherwise, there may be a market distortion created where states may look to both the underlying supplier and the VoIP revenue for contribution on what is the same service provided to the end user. Such multiple contributions will lead to inequitable results. Ensuring that states do not seek duplicative contribution from VoIP providers and their carrier suppliers, would be consistent with the existing federal USF system. Mandating such a “carrier’s carrier” rule on VoIP contribution is consistent with the Commission’s policies on VoIP regulation, ensuring equitable and competitively neutral regulations and limited state involvement in the regulation of this technology.

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As other filings have noted, the application of any rule must be prospective. While the limitation to prospective application is certainly necessary to avoid harm to VoIP providers, the limitation is also necessary to ensure that suppliers of telecommunications to VoIP providers are not placed in an untenable position between the providers and states for prior periods. In many cases, the provider of the underlying telecommunications has been paying to the applicable state administrator on the intrastate revenues it receives from VoIP providers, and passing through these charges to the VoIP customer. If there is retroactive effect to any order, then telecommunications suppliers to VoIP providers, through no fault of their own, would likely face demands for refunds of these charges from the VoIP customers, but face difficulty in receiving a refund from the state administrator from contributions they may have already made into the applicable state Universal Service program.

The Commission should *explicitly* state that, regardless of how it rules in this matter, that there should be no retroactive application of the ruling. To do so would create an inevitable, yet unnecessary, series of disputes between the states, the VoIP providers and their suppliers, leading to more requests for the Commission to resolve these issues.

Level 3 urges the Commission, in deciding the issues raised by the Petition to be mindful of any implementation issues caused by any Commission decision. In particular, the Commission should prevent competitive distortions that can be caused if underlying carriers would be required to contribute on wholesale revenue to VoIP providers who themselves are subject to assessment. Further, any such assessment must be made prospective only so as to avoid setting off a chain of disputes between suppliers, VoIP providers and the regulators. Such disputes would almost certainly return to the Commission for resolution.

Sincerely yours,



Douglas D. Orvis II

Counsel to Level 3 Communications, LLC

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