



WILTSHIRE
& GRANNIS LLP

August 31, 2010

EX PARTE

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

Re: Level 3 Communications, LLC, Petition for Declaratory Ruling that Right-of-Way Rents Imposed by the New York State Thruway Authority Are Preempted Under Section 253, WC Docket No. 09-153

Dear Ms. Dortch:

On August 30, 2010, John Ryan of Level 3 Communications (“Level 3”) and I, on behalf of Level 3, discussed with Austin Schlick, General Counsel, and Julie Veach, of the Office of General Counsel, and on August 31, 2010, John Ryan, Madeleine Findley and I, on behalf of Level 3, met separately with Zachary Katz, Legal Advisor to Chairman Genachowski; Austin Schlick; and Bill Dever, Cathy Seidel, and Tim Stelzig, of the Wireline Competition Bureau, with Christi Shewman and Brad Gillen, Legal Advisors to Commissioner Baker, and with Jennifer Schneider, Legal Advisor to Commissioner Copps. We discussed the importance of accessible middle- and last-mile networks to achieving the Commission’s broadband deployment goals, noting that inconsistent rights-of-way and franchise policies constrict supply to satisfy skyrocketing consumer demand for wireless and wireline broadband. In that vein, we stated that the Commission needed to make clear that, under Section 253, it has the authority to set and police limits on state and municipal rights-of-way compensation. Setting such limits and making them clear would help parties to negotiate mutually reasonable rights-of-way agreements.

We also discussed the factual history of this dispute and the fact that NYSTA has extracted exorbitant rents for low-space occupancy in a situation in which Williams had no alternative to agreeing to such rents if it wanted to make use of the fiber backbone for which it had separately paid \$25 million.

Ms. Marlene H. Dortch

August 31, 2010

Page 2 of 2

Finally, we stated that the prompt adjudication of Level 3's petition should not await the National Broadband Plan's proposed Intergovernmental Task Force on Rights-of-Way. Among other things, that panel is unlikely to produce useful guidance for the Commission on rights-of-way compensation standards because it only includes sellers and not purchasers of rights-of-way. For all of these reasons and in light of the Commission's broadband deployment goals, we urged timely resolution of this petition. A copy of this letter is being filed in the above-referenced docket.

Sincerely,

/s/ John T. Nakahata

John T. Nakahata

Counsel to Level 3 Communications

cc: Zac Katz
Jennifer Schneider
Brad Gillen
Christi Shewman
Austin Schlick
Cathy Seidel
Julie Veach
Bill Dever
Tim Stelzig