

Eric J. Branfman
Direct Phone: 202.373.6553
Direct Fax: 202.373.6001
Eric.branfman@bingham.com

February 9, 2011

VIA ELECTRONIC FILING

EX PARTE

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

Re: *Special Access Rates for Price Cap Local Exchange
Carriers, WC Docket No. 05-25*

Dear Ms. Dortch:

As reflected in a February 4, 2011 ex parte letter in this docket, Level 3 met with staff of the Wireline Competition Bureau on February 3, 2011, suggesting that ILECs' contracts for special access locked purchasers in to contracts that precluded them from self-supplying or purchasing any significant part of their special access needs from other suppliers.

On behalf of Level 3, we submit two sets of questions that we believe would enable the Commission to collect data that will establish the extent to which ILECs in fact lock-up special access demand through such contracts. The first set is designed to be directed to large ILECs and the second set is designed to be directed to large purchasers of special access. These constitute a revised and enhanced version of suggested data requests submitted by Level 3 on October 25, 2010.

Sincerely yours,

/s/ electronically signed

Eric J. Branfman
Counsel for Level 3 Communications, LLC

cc: (by e-mail)
Pamela Arluk
Albert Lewis
Elizabeth McIntyre
Pamela Megna

Boston
Frankfurt
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

Ms. Marlene H. Dortch, Secretary
February 9, 2011
Page 2

Eric Ralph
Nicholas Alexander
Jonathan Baker
Jack Erb
Rodger Woock
Jay Bennett
Richard Kwiatkowski
Marvin Sacks
Kenneth Lynch
Steven Rosenberg

TO ILECs

1. For all sales of special access services or facilities you (including without limitation your interexchange provider affiliates) have made since January 1, 2008 (regardless of when the contract to sell the services or facilities was entered into):
 - a. Provide copies of the contracts, contract tariffs, or tariffs (where tariffs or contract tariffs are publicly available, you may provide a reference to the tariff or contract tariff sufficient to identify it in lieu of producing a copy; however, this does not take the place of producing a copy of the contract underlying a particular contract tariff filing).
 - b. Provide copies of any amendments or other documents that modify the rates, terms or conditions under which special access services or facilities were sold.
 - c. State the total dollar volume of sales under each contract, contract tariff, or tariff for each year since January 1, 2008.
 - d. State the dollar volume of sales under each contract, contract tariff, or tariff in each MSA for each year since January 1, 2008.
 - e. Where a contract tariff includes any provision specifying a minimum and/or a maximum dollar volume or number or miles of circuits of (i) special access circuits or (ii) one or more particular types of special access circuits, either to comply with the contract tariff or to qualify for any particular level of discounts, describe how such maximum and/or minimum was developed and the business rationale for any maximum, and identify every customer that you contend qualified for such contract tariff and state whether it actually purchased under such contract tariff.
2. For all purchases of special access services or facilities you (including without limitation your interexchange provider and wireless affiliates) have made, whether from an affiliated or an unaffiliated provider, since January 1, 2008 (regardless of when the contract to purchase the services or facilities was entered into):
 - a. Provide copies of the contracts, contract tariffs, or tariffs (where tariffs or contract tariffs are publicly available, you may provide a reference to the tariff or contract tariff sufficient to identify it in lieu of producing a copy; however, this does not take the place of producing a copy of the contract underlying a particular contract tariff filing).
 - b. Provide copies of any amendments or other documents that modify the rates, terms or conditions under which special access services or facilities were purchased.
 - c. State the total dollar volume of purchases under each contract, contract tariff, or tariff for each year since January 1, 2008.

- d. State the dollar volume of purchases under each contract, contract tariff, or tariff in each MSA for each year since January 1, 2008.
 - e. For each MSA, state the combined dollar volume of all special access purchases from (i) your own affiliate(s); (ii) any Bell Operating Company or BOC affiliate other than your own affiliate(s); (iii) any incumbent local exchange carrier other than a Bell Operating Company or BOC affiliate; and (iv) all other providers, for each year since January 1, 2008.
 - f. Where a contract, contract tariff, or tariff includes any provision specifying a minimum and/or a maximum dollar volume or number of special access circuits, either to comply with the contract, contract tariff or tariff, or to qualify for any level of discounts, state the dollar volume or number of special access circuits (as applicable) you purchased from that supplier in each of the two years immediately preceding entry into the contract, contract tariff, or tariff and the dollar volume or number of such circuits you purchased from that supplier in each of the first two years of the contract, contract tariff, or tariff term.
3. State what percentage of special access services provided by you over the last year for which data is available are at undiscounted tariffed rates and what percentage of special access services are provided by you at discounts of (a) 0.1-20%; (b) 20.1-30%; (c) 30.1-40%; (d) 40.1-50%; and (e) greater than 50%, compared to the undiscounted tariffed rate for such service.
 4. Provide all summary documents showing, in spreadsheet form or other abbreviated form (other than the full tariffs themselves), your customers and the special access volume and term levels to which they are committed.
 5. Provide all documents prepared since January 1, 2006., whether prepared internally or externally, discussing the reasons for obtaining purchasers' commitments to buy 80% or more of a prior year's purchase of special access services from you in order to receive the price pursuant to which it purchased special access.
 6. Separately for each Listed Statistical Area listed in Attachment C of the October 28, 2010 Data Request in this Docket in which you sell special access, identify your current competitors for the provision of special access to your customers, and likely potential entrants for such competition within the next two years (to the end of calendar year 2012).
 7. Provide all documents discussing the actual or potential impact of the volume and term commitments by your customers in your special access contracts, on actual and potential competitors for the provision of special access services or upon competition in the market for special access services as a whole.
 8. Provide copies of all contracts for services for any customer for which the provision of such services, or discounts or penalties associated with such services, are related to that customer's purchase of specified volumes of special access services.
 9. State your affiliated ILECs' total interstate special access revenues by MSA, and for

the area outside of MSAs in each state you serve, for each year since January 1, 2008.

10. State the aggregate amount of special access revenues of your affiliated ILECs in each MSA (where applicable) for interstate special access services provided under contracts or contract tariffs, for each year since January 1, 2008.
11. Separately for each of your affiliated ILEC entities and separately for each year since January 1, 2008, provide the average prices charged for DS-1 level interstate special access service to each of the following categories of purchaser:
 - a. Affiliates of the ILEC
 - b. Wireline affiliates of other ILECs
 - c. Wireless carriers not affiliated with you
 - d. Wireline carriers not affiliated with an ILEC
 - e. End users
12. Separately for each of your affiliated ILEC entities and separately for each year since January 1, 2008, provide the average prices charged for interstate DS-3 level special access service to each of the following categories of purchaser:
 - a. Affiliates of the ILEC
 - b. Wireline affiliates of other ILECs
 - c. Wireless carriers not affiliated with you
 - d. Wireline carriers not affiliated with an ILEC
 - e. End users
13. Where a contract, contract tariff, or tariff pursuant to which one of your affiliated ILECs provided special access to one or more customers since January 1, 2008 includes any provision specifying a minimum and/or a maximum dollar volume or number of special access circuits, either to comply with the contract, contract tariff or tariff, or to qualify for any level of discounts, state the dollar volume or number of special access circuits (as applicable) purchased by each customer in each of the two years immediately preceding entry into the contract, contract tariff, or tariff, and the dollar volume or number of such circuits purchased by that customer in each of the first two years of the contract, contract tariff, or tariff term.
14. In each year since January 1, 2008, what portion of your total in-region tariffed special access revenue (excluding revenue received pursuant to contract tariffs) is received pursuant to the purchaser's commitment to buy 80% or more of a prior

year's purchase of special access services from you in order to receive the price pursuant to which it purchased special access? Please provide the data supporting this calculation.

15. In each year since January 1, 2008, what portion of your total in-region untariffed special access revenue (including revenue received pursuant to contract tariffs and contracts) is received pursuant to the purchaser's commitment to buy 80% or more of a prior year's purchase of special access services from you in order to receive the price pursuant to which it purchased special access? Please provide the data supporting this calculation.

To large purchasers of special access

1. In each year since January 1, 2008, separately for each ILEC from which you purchase special access, what percentage of your total special access spend (excluding spend pursuant to contract tariffs) is spent pursuant to the purchaser's commitment to buy 80% or more of a prior year's purchase of special access services in order to receive the price pursuant to which you purchased special access? Please provide the data supporting this calculation.

2. In each year since January 1, 2008, separately for each ILEC from which you purchase special access, what percentage of your special access spend (including spend pursuant to contract tariffs and contracts) is spent pursuant to the purchaser's commitment to buy 80% or more of a prior year's purchase of special access services in order to receive the price pursuant to which you purchased special access? Please provide the data supporting this calculation.