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

Re: Data Requested in Special Access NPRM, WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

Level 3 files this letter to correct the record and to respond to statements made by Verizon in a February 28, 2011 letter to the Commission.¹ In that letter, Verizon mistakenly states that Level 3 did not provide any of its own data in response to the Commission's initial request in the above-referenced docket.² In fact, Level 3 submitted its response to the Commission's data request on February 11, 2011 and it was received by the Commission on February 14, 2011, although confirmation of Level 3's filing did not appear in the record until March 1, 2011, the day following Verizon's above-mentioned letter.

¹ See Letter from Donna Epps, Verizon to Marlene H. Dortch, FCC, Data Requested in Special Access NPRM, WC Docket No. 05-25, and RM-10593 (Feb. 28, 2011) (Verizon Letter).

² Public Notice, *Data Requested in Special Access NPRM*, 25 FCC Rcd 15146 (2010).

Verizon also asserts that the Commission should reject an earlier request made by Level 3 encouraging the Commission to seek data regarding special access contracts.³ Verizon argues that such data is “competitively sensitive, highly confidential, and irrelevant to the proceedings at hand.”⁴ To the contrary, Level 3 argues that the value of such data is essential to the Commission’s evaluation of competition in the special access market. While Verizon is correct in stating that “the terms of contract tariffs and tariffs are already on file with the Commission and are publicly available,”⁵ the competitive significance of the tariffs is not ascertainable without further data.

In order to determine whether these ILEC contract tariffs and tariffs require buyers of a large percentage of special access circuits to purchase all or nearly all of their special access needs from the ILEC and thus result in anticompetitive market foreclosure, the Commission must know not only that potentially anticompetitive tariffs and contract tariffs exist, but also measure how they influence the marketplace. The record reflects that ILECs have many generally available tariffs that require buyers to buy all or virtually all of their access needs from the ILEC, but there is no evidence as to the volume purchased under such tariffs. That volume would be reflected by responses to the data requests proposed by Level 3. In addition, the record reflects many contract tariffs that require specific purchase volumes in dollars, but it is not clear, without the type of information requested in Level 3’s proposed data requests, whether those purchase volumes are at levels that approximate the purchaser’s prior purchase volumes. The fact that the information about such contracts is highly confidential and competitively sensitive is precisely what makes them so crucial to the Commission’s competitive analysis.

While Verizon asserts that “Level 3’s proposed requests appear to seek data about private contracts for very high-capacity or IP-based services that are not subject to price caps or the associated pricing flexibility regime, and thus are not even part of this inquiry,”⁶ such contracts often contain provisions that provide purchasers with discounts on DS1 and DS3 special access circuits and thus are properly part of this proceeding. Verizon also objects to being asked about sales of special access to its affiliates. Level 3’s proposed request called for the ILECs to disclose the purchases of special access by their affiliates from them, as well as from others. Given that Verizon’s affiliates are

³ See Letter from Eric J. Branfman, Level 3, to Marlene H. Dortch, FCC, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (Feb. 9, 2011).

⁴ Verizon Letter at 1. It is ironic that at the same time that Verizon objects to being asked for its sales volumes (*id.* at 2) it contends that this is a “rapidly growing marketplace.” *Id.* at 3. The Commission should not take Verizon’s word for it that the marketplace for special access circuits subject to price flexibility is “rapidly growing,” but should collect data to ascertain if that is true, and how the growth, if it exists, is being channeled to ILECs by anticompetitive contract terms.

⁵ *Id.* at 2.

⁶ *Id.*

among the very largest purchasers of special access, both in and out of region, it is critically important for the Commission to learn whether they are able to avoid being locked up by the same type of contracts to which Level 3 and other purchasers of special access have objected.

Verizon's letter also implies that outside counsel permitted to view the data request responses will ignore the Commission's protective order and pass on the information for their client's competitive business use. Level 3 submitted highly confidential data in the expectation that outside counsel to Verizon and other parties would not share such data with their clients, and Level 3 and its outside counsel will likewise honor the terms and conditions of any such protective order. Finally, notwithstanding Verizon's allegations about improper use of the requested data, if Verizon's special access contracts are indeed proof of what it contends is extensive competition for the provision of high-capacity services,⁷ it should have no objection to submitting the additional information requested by Level 3. Verizon should recognize it as an opportunity to attempt to foreclose arguments that its tariffs and contract tariffs are anticompetitive.

If you have any additional questions, please feel free to contact the undersigned.

Sincerely,

/s/ Erin Boone

⁷ See Verizon Letter at 3.