

July 19, 2011

Ex Parte Notice

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

Re: *Global Crossing Limited and Level 3 Communications Inc., Application for Consent to Transfer Control of Authority to Provide Global Facilities-Based and Global Resale International Telecommunications Services and of Domestic Common Carrier Transmission Lines, Pursuant to Section 214 of the Communications Act, as Amended, IB Docket No. 11-78*

Dear Ms. Dortch:

On July 15, 2011, John Ryan, Chief Legal Officer, Level 3 Communications, Inc. (“Level 3”), and Erin Boone, both of Level 3, Kent Bressie and John Nakahata of Wiltshire & Grannis LLP (on behalf of Level 3), and Matthew Brill of Latham & Watkins LLP (on behalf of Global Crossing Limited) (“Global Crossing”) met with Sharon Gillett, William Dever, Tim Stelzig, Pam Megna and Richard Hovey of the Wireline Competition Bureau, Paul de Sa and Jonathan Levy of the Office of Strategic Planning and Policy Analysis, Howard Griboff and David Strickland of the International Bureau, and Jim Bird and Virginia Metallo of the Office of the General Counsel regarding the above-referenced applications.

Level 3 and Global Crossing (collectively “Applicants”) stated that the transaction represented by the Applications (“Transaction”) will benefit the public interest. The Transaction will unite two complementary companies and networks, increasing both worldwide reach and the depth of on-network U.S. facilities beyond what either entity currently has on its own today. This will enable the combined entity to compete even more vigorously with entities such as AT&T and Verizon, as well as many smaller players, in the provision of both Internet and telecommunications services. The Transaction will also return Global Crossing and its businesses to U.S. management control and predominantly U.S. ownership. Applicants estimate that the Transaction will result in \$340 million in annualized synergies, including reductions in network, operations and capital expenditures. The Transaction will also reduce Level 3’s cost of borrowing by improving the combined company’s leverage ratios. Given the highly competitive nature of the telecommunications and Internet connectivity markets in which the companies compete, these savings will redound to the benefit of consumers.

Applicants also noted that only two comments were filed with respect to the applications, and explained that neither filing presents any serious public interest concern. Pac-West’s comments focus on a commercial dispute it is having with Level 3. Many of the core issues in

that dispute, including potentially dispositive ones, are currently being considered by the Commission in response to petitions for declaratory ruling filed by Pac-West and Verizon pursuant to a federal district court's primary jurisdiction referral,¹ or in the Commission's intercarrier compensation rulemaking.² Consistent with the Commission's general practice, these issues – which could have an industry-wide impact – should be considered in those proceedings, and not in the context of these transaction-specific applications.³

XO's comments assert that the combined Level 3-Global Crossing would have the ability to "tip" the Tier 1 Internet backbone market to monopoly. In the first instance, Tier 1 Internet backbone is no longer a relevant product market, as enterprises now have many different ways to move traffic across the Internet, including direct peering with other Internet-based enterprises and the use of content delivery networks, in addition to purchasing transit. A proper market definition would need to include these other alternatives. In any event, XO bases its claims upon market shares that are artificially constructed. The Renesys database that XO cites does not measure market share, but direct and indirect connections between autonomous systems. XO's economist attempts to convert the number of links in-to market share, but without any evidence that there is a correlation between the number of autonomous systems and traffic carried. Moreover, Renesys does not combine the numbers of links for commonly-owned autonomous systems – which means that entities such as AT&T and Verizon are ranked lower than Level 3 simply because they operate multiple autonomous systems whereas Level 3 operates only one.

Most glaringly, with both its Renesys data and the market shares computed from its own traffic exchanges, XO limits its calculation to what it characterizes as the "Top Ten." But there is no basis on which to believe that these ten constitute all or nearly all Internet backbone traffic. What XO has done is to artificially inflate its market share computations by excluding an unknown, but potentially sizeable, portion of the market. In fact, other listings of Internet backbones by autonomous systems links (such as TeleGeography) confirm that, even if autonomous systems correlate to market share as XO hypothesizes, XO has excluded a substantial number of other providers cumulating to significant "market share."

¹ *Pleading Cycle Established For Comments On Pac-West Telecomm, Inc. And Verizon Petitions For Declaratory Ruling*, Public Notice, WC Docket No. 11-115 (rel. July 7, 2011).

² *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554 (2011).

³ *See e.g., Applications of Comcast Corp., Gen. Elec. Co. & NBC Universal, Inc.*, 26 FCC Rcd. 4238, 4516 n.299 (2011) ("To the extent commenters raise concerns regarding the Commission's program carriage rules more generally, we note that the Commission has an open rulemaking proceeding regarding these issues. We defer discussion of the Commission's program carriage rules to the larger rulemaking proceeding."); *see also AT&T-BellSouth Order*, 22 FCC Rcd. at 5696 ¶60 & n.172; *SBC-AT&T Order*, 20 FCC Rcd. at 18393 ¶ 55 & n.161; *Verizon-MCI Order*, 20 FCC Rcd at 18580 ¶ 55 & n.157.

Applicants also stated that XO also ignores economic literature showing that, even at the levels of market share that it claims would exist post-transaction for the combined Level 3-Global Crossing, “tipping” is not possible. This is both because the combined share is not large enough – below the fifty percent threshold that the literature explains is a minimum (but not sufficient) condition for a profitable tipping strategy – and because Level 3 and Global Crossing have only a very small percentage of single-homed customers. According to Renesys, the vast majority of customers of the combined company are and will continue to be multi-homed after the Transaction, *i.e.*, they do and will continue to obtain Internet connectivity from a source not affiliated with Level 3 or Global Crossing, in addition to the services they receive from Applicants.

Finally, Applicants stated that XO thus makes no showing that the Transaction could imperil competition for Internet backbone services, and the Commission will not need information beyond that provided in the comments in order to reach that conclusion.

Sincerely,

/s/
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