

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of Connect America Fund	WC Docket 10-90
A National Broadband Plan for Our Future	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers	WC Docket No. 07-135
High-Cost Universal Service Support	WC Docket No. 05-337
Developing an Unified Intercarrier Compensation Regime	CC Docket No. 01-92
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Lifeline and Link-Up	WC Docket No. 03-109

**REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC ON  
THE UNIVERSAL SERVICE-INTERCARRIER COMPENSATION  
AUGUST 3, 2011 PUBLIC NOTICE**

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**Introduction and Summary**

Level 3 Communications, LLC (“Level 3”) submits these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice (“PN”) issued August 3, 2011.<sup>1</sup> As Level 3 noted in its initial comments, one objective of the

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<sup>1</sup> *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (2011) (“PN”).

Commission’s intercarrier compensation reforms must be to achieve the utmost clarity and enforceability in the rules. The history of disputes, complaints, and litigation since the *CLEC Access Charge Orders*<sup>2</sup> shows that carriers will be creative in trying to find ways to maximize intercarrier compensation revenue. While it may not be possible to anticipate all such measures that either incumbent local exchange carriers (“ILECs”) or competitive local exchange carriers (“CLECs”) could take to buttress falling intercarrier compensation revenues, the lessons from the implementation of the CLEC access charge regime are that uncertainty will prevail for years, unless the Commission closes known and identifiable loopholes and attempts to provide clear and implementable rules and distinctions.

The comments also confirm that there is no sustainable way to distinguish Voice over Internet Protocol (“VoIP”) from “non-VoIP” traffic, and it is not even clear that commenters are addressing a common set of traffic. All of the “solutions” put forward for identifying “VoIP” traffic are inadequate, and thus will leave the door open to rampant claims that traffic is “VoIP” – and thus rampant arbitrage. Notably, while the proposed America’s Broadband Connectivity Plan (“ABC Plan”) is ambiguous on this point, if the plan proposes to subject all long distance VoIP traffic to interstate access, including originating VoIP traffic, then the period in which this arbitrage will be a significant problem will extend far beyond the proposed eighteen months that it takes to unify terminating interstate and intrastate access rates.

Many commenters, like Level 3, pointed out the inequity in the ABC and rural local exchange carrier (“RLEC”) Plans’ impact on CLECs, which experience a steep revenue drop in the first three to four years of the plan, and the ILECs, which experience that decline over eight

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<sup>2</sup> *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923 (2001) (“*Seventh Report and Order*”); *Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, 9116 ¶ 17 (2004) (“*Eighth Report and Order*”).

years, if at all. Indeed, RLECs will apparently suffer no decrease in revenues – and may increase revenues – through 2020. Commenters, like Level 3, suggest modifying the CLEC rate transition timetable to provide a revenue reduction glide path that is of equal duration to the price cap LECs.

Finally, many parties also note the incompleteness – and competitive bias – of reducing rates for transport from the point of interconnection to the end office in a flash cut for traffic between the terminating carrier’s tandem and its end user customer at the end of Year Six. At a minimum, the Commission should reduce the fixed rate per month elements in equal increments from the interstate access rate (once interstate and intrastate rates are unified) to the reciprocal compensation rate – which will effectively be \$0.

**I. It is Essential to Close Loopholes and Eliminate Potential Uneconomic Arbitrage in Order to Ensure an Effective Access Reform Transition.**

Past reforms of intercarrier compensation have left open opportunities for arbitrage by certain LECs or other providers, which should be resolved in this comprehensive reform. The proposed ABC and Joint ILEC Plans recognize the importance of halting existing arbitrage schemes as part of the transition. The ABC Plan, for example, states, “The Commission should adopt rules to address phantom traffic and arbitrage schemes involving both originating and terminating traffic, including traffic pumping.”<sup>3</sup> However, to be successful in curbing rule-based arbitrage and promoting “market-driven policies,” the Commission must look beyond traffic pumping and phantom traffic to ensure that the access regime closes old loopholes and does not

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<sup>3</sup> Letter from Robert W. Quinn, Jr., AT&T Inc., Steve Davis, CenturyLink, Inc., Michael T. Skrivan, FairPoint Communications, Inc., Kathleen Q. Abernathy, Frontier Communications, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, Federal Communications Commission at Attachment I, p. 10 (July 29, 2011) (“ABC Plan”).

create new opportunities for arbitrage.<sup>4</sup> Failure to address these schemes opens the door to evasion of the Commission's intercarrier compensation transition plan and distorts the operation of markets, rather than facilitating market-driven policies.

Level 3 has proposed several reforms to resolve, on a going forward basis, disputes and abuses in addition to traffic pumping and phantom traffic that have plagued the existing access charge system, many of which have been endorsed by other commenters as well. These include:

- Prohibit “mileage pumping” by limiting all LECs only to charging for transport from their end office switch or equivalent to the nearest ILEC tandem. Both AT&T and Verizon supported eliminating “mileage pumping.”<sup>5</sup>
- Benchmark CLEC database query charges (such as for toll-free calls) to the competing ILEC's charges, which was proposed by AT&T.<sup>6</sup> This will reduce arbitrage on toll-free originated calls, including incentives for Inserted CLEC schemes in which a CLEC is interposed in a wireless-originated toll-free call to collect access charges in excess of the ILEC's to then be shared between the CLEC and its wireless carrier customer.
- Establish a bright line test that defines when a local exchange carrier will be eligible to receive end office switching access charges. As National Cable &

Telecommunications Association (“NCTA”) stated, “by making clear that traffic that

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<sup>4</sup> *Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4,554, ¶10 (2011).

<sup>5</sup> Reply Comments of AT&T (regarding Feb. 9, 2011 *NPRM*) at 34, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed May 23, 2011).

<sup>6</sup> Comments of AT&T (regarding Feb. 9, 2011 *NPRM*) at 40-41, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed Apr. 1, 2011).

originates or terminates in IP format is covered by the compensation rules, but not making corresponding adjustments in the rules to reflect the differences between IP networks and TDM networks, there is a significant possibility that any new rules would fail to provide the certainty that all providers agree would be beneficial.”<sup>7</sup> Comcast Corporation (“Comcast”) raised this issue, explaining that “end office” is “a term that typically is used to describe TDM-based switches that incumbent LECs deploy in their local networks.”<sup>8</sup> To avoid ambiguity with respect to service configurations and networks other than the ILECs’, as Comcast argued, the Commission “should make clear that an originating voice provider is obligated to pay the rate specified by the Commission for the termination of its traffic, during and after the transition, regardless of the technology of the terminating network and regardless of whether the traffic is ultimately delivered to the called location by the entity assessing the termination charge, such as when a competitive LEC partners with a VoIP provider.”<sup>9</sup> Similarly, Time Warner Cable Inc. (“TWC”) argued that the definition of “interstate switched exchange access services” should be amended to “make clear that such services include the termination of interexchange telecommunications traffic to any end user – including a retail customer or a provider

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<sup>7</sup> Comments of the National Cable & Telecommunications Association at 18, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“*NCTA Comments*”).

<sup>8</sup> Comments of Comcast Corporation at 6, WC Docket Nos. 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed Aug. 24, 2011) (“*Comcast Comments*”).

<sup>9</sup> *Id.* at 7.

of VoIP services – regardless of the specific functions provided.”<sup>10</sup> Level 3’s proposed solution – a symmetrical rule that a CLEC provides end office service when it is identified in the Number Portability Administration Center (“NPAC”) database as providing the calling party or dialed number – would resolve the issues highlighted by NCTA, Comcast, and TWC.<sup>11</sup> As Level 3 explained in its initial comments, the question of what constitutes end office functionality is particularly difficult in a wholesale setting, in which the LEC is providing a non-carrier entity with telephone numbers (at least today, in the absence of direct access to North American Numbering Plan numbers by non-carriers) and access to the public switched telephone network (“PSTN”), which that non-carrier entity then uses to provide service to its customers.<sup>12</sup> A revised definition of end office switching that focuses on the carrier identified in the NPAC database will remove uncertainty regarding payment obligations and ensure fairness in the access regime and preempt developing disputes and litigation about when a LEC may charge for end office functionality, and when it may not do so.

- Clarify the application of the CLEC Access Charge Benchmark when the CLEC serves the end user with a single switch and provides common transport to the ILEC tandem. As Level 3 proposed in its comments, a CLEC should be entitled to tariff

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<sup>10</sup> Comments of Time Warner Cable Inc. at 10, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“*Time Warner Cable Comments*”).

<sup>11</sup> Comments of Level 3 Communications, LLC on the Universal Service-Intercarrier Compensation August 3, 2011 Public Notice at 23, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“*Level 3 Comments*”). Notably, this would have to be the Calling Party Number and not the Charge Number to avoid certain abuses that have arisen.

<sup>12</sup> *Id.* at 22 (citing 47 C.F.R. § 69.2).

and collect a charge for this service, so long as its charge is below the ILEC's end office switching plus common transport rates, but not for tandem switching that is not provided.<sup>13</sup> If the Commission does not make this clear, some CLECs will try to mitigate the impact of a reform plan's access rate reductions by charging access rates at the level of the ILEC's rates for end office and tandem transport, including tandem switching. The Commission needs to make these rules clear.

- Preclude CLECs from inflating access charges by amortizing elements billed on a fixed monthly recurring basis, such as end office port charges, to create per minute rates that are not in the ILEC's tariffed rates. Again, as the Commission ratchets down CLEC access rates, some CLECs will seek to escape at least a portion of those rate reductions by inflating the calculation of the CLEC Access Charge Benchmark. Some CLECs already do this by adding charges not assessed by the ILEC into the benchmark, calculating blended rates based on amortized ILEC rates for facilities such as end office ports that are billed on a monthly recurring basis, rather than a per minute basis. Precluding CLECs from doing this will both promote access reform and incent parties to enter into direct traffic exchange agreements.<sup>14</sup>

The Commission should adopt each of these proposed reforms as part of its comprehensive plan, both to close loopholes and to help ensure the plan's success in actually achieving a market-driven compensation regime.

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<sup>13</sup> *Id.* at 5, 16-18.

<sup>14</sup> Level 3 Comments at 5, 18-20.

## **II. Proposals for Identifying and Distinguishing VoIP Traffic Cannot Easily Be Implemented or Enforced, and Therefore Invite Arbitrage.**

Regardless of what may be their facial appeal, proposals for identifying and distinguishing VoIP traffic in order to subject that traffic to different rates than all other traffic are fraught with problems of workability and enforcement. Commenters do not agree on a common definition of VoIP, and one commenter, Bright House Networks Information Services, LLC (“Bright House”), argues that “there is no such thing as ‘VoIP traffic’ on the PSTN,” because there is no “technically or economically meaningful distinction between different ‘types’ of calls on the PSTN based on the technology used to originate or terminate them.”<sup>15</sup> Furthermore, each proposed solution to identify VoIP—whether database fields or factors—fails to actually accomplish its purpose, and thus would continue to leave all traffic claimed to be VoIP to be subject to disputes and litigation. And for originating traffic, the ABC Plan never eliminates the differentials between interstate and intrastate access rates, which will remain significant particularly with respect to originating toll-free traffic.

A broad range of commenters, including Cox Communications, Inc. (“Cox”), TWC, Bright House, Comcast, Pac-West Telecomm, Inc. (“Pac-West”), Earthlink, Inc. (“Earthlink”), and Cbeyond, Inc., Integra Telecom, Inc., and tw telecom Inc. (“Cbeyond”, “Integra”, and “tw telecom”), and several RLECs including SureWest Communications in California and Texas Statewide Telephone Cooperative, Inc., warned that VoIP cannot feasibly be distinguished from other traffic, and thus would perpetuate arbitrage. In its comments, Earthlink describes how a

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<sup>15</sup> Comments of Bright House Networks Information Services, LLC on Further Inquiry at 2, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“*Bright House Comments*”) (“Once a call is on the PSTN, being handled in standard circuit-switched, TDM format, the type of technology used to originate or terminate it has nothing to do with how it is handled. Traffic on the PSTN is just that – traffic on the PSTN.”).

separate rate for VoIP would “perpetuate carrier incentives to disguise or represent traffic as IP-originated and [lead to continued] carrier disputes about the applicable rates.”<sup>16</sup> Cox explains that technical or billing solutions to identify VoIP traffic will prove unworkable: some carriers will inevitably “fail to provide the signaling information necessary to do proper billing, [and] reliance on a flag, database field or other similar technology fix to indicate IP-based traffic will be subject to the same troubles.”<sup>17</sup> Proponents of these system flags argue that the new identifier can be enforced by allowing LECs to audit the data,<sup>18</sup> or by FCC “enforcement action.”<sup>19</sup> But these enforcement methods are insufficient and costly. The difficulty of tracking data through intermediaries will also invite disputes and make the data difficult to audit.<sup>20</sup>

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<sup>16</sup> Comments of Earthlink, Inc. on Further Inquiry Public Notice at 14, WC Docket Nos. 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket No. 05-337 and 96-45 at 13-14 (filed Aug. 24, 2011) (“*Earthlink Comments*”).

<sup>17</sup> Comments of Cox Communications, Inc. at 6, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket No. 01-92 (filed Aug. 24, 2011) (“*Cox Comments*”). See also Time Warner Cable Comments at 8-9 n.18; Bright House Comments at 2-3; Comments of Comcast Corporation at 5-8, WC Docket Nos. 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed Aug. 24, 2011) (“*Comcast Comments*”); Comments of Pac-West Telecomm, Inc. at 6-8, WC Docket Nos. 07-135, 05-337, and 03-109, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed Aug. 24, 2011) (“*Pac-West Comments*”); Earthlink Comments at 13-14; Comments of Cbeyond, Inc., Integra Telecom, Inc., and tw telecom Inc. at 3, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“*Cbeyond, Integra, and tw telecom Comments*”); Comments of Comptel at 23-24, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“*Comptel Comments*”).

<sup>18</sup> See Comments of XO Communications, LLC at 10, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 25, 2011) (“*XO Comments*”); Comments of PAETEC Holding Corp. on Further Inquiry Public Notice at 27, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“*PAETEC Comments*”).

<sup>19</sup> See Comments of Vonage Holdings Corp. at 5, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“*Vonage Comments*”).

<sup>20</sup> See e.g., Earthlink Comments at 14-15.

Database fields or other flags or signaling options do not provide an adequate solution to identifying VoIP traffic. Such solutions would be costly to implement and would require carriers to update billing systems. Additionally, the new code would have to be passed downstream through each intermediary carrier (or upstream to the originating carrier when a call is terminated in IP). Once mixed with other traffic on the network, VoIP traffic will become exceedingly difficult to track, opening the door to parties that might inflate minutes.<sup>21</sup> Thus, any system that implements very different compensation for VoIP and non-VoIP traffic invites arbitrage.

For example, PAETEC Holding Corp. (“PAETEC”) proposes that National Exchange Carrier Association, Inc. (“NECA”) create a new Operating Company Number (“OCN”) code, which the Commission would then require providers to use in the signaling stream or call record.<sup>22</sup> But the OCN code is fundamentally flawed for two reasons. First, the parties responsible for paying switched access are interexchange carriers (“IXCs”), which do not use OCNs, but Carrier Identification Codes (“CICs”) to identify the trunks on which they terminate traffic. Second, even if OCNs were used, a carrier might need to port millions of phone numbers to a new OCN with no means to validate that the number represented an IP end point, which would undermine the code’s function as a validation mechanism. Thus, the suggestion that a new OCN code could be used to identify VoIP traffic fails from the outset.

Three other database field proposals would involve excessive time and cost to implement. First, using the jurisdictional information parameter (“JIP”) to identify VoIP traffic, as several commenters suggest,<sup>23</sup> would be problematic because although carriers sometimes use the JIP field its use is not mandatory. A new requirement that all carriers use a JIP to identify VoIP calls

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<sup>21</sup> Level 3 Comments at 3-4, 13-14.

<sup>22</sup> PAETEC Comments at 25.

<sup>23</sup> See *e.g.*, XO Comments at 10; Vonage Comments at 5.

would take months to implement as carriers update billing systems to read this information. The cost and time involved in implementation would be excessive, particularly in view of the fact that the ABC and RLEC plans unify interstate and intrastate terminating access rates after eighteen months, and even under Level 3's proposed timetable, these would be unified after thirty months.

Vonage Holdings Corp ("Vonage") recommends the Calling Party Category ("CPC"),<sup>24</sup> an as-yet non-agreed-upon parameter in the SS7 message stream. This would require substantial time and expense to be implemented into EMI records for billing as well as the billing systems of individual carriers to modify the cost for these calls.

Similarly, implementation of the Charge Number field<sup>25</sup> would require great expense and would likely be unworkable as well. To use the Charge Number field as a VoIP identifier, the Commission or industry would have to implement a central repository to identify which telephone numbers are VoIP into which carriers would have to be required to place VoIP numbers. Carriers would then have to create new systems to query the repository for billing purposes. And this would not begin to address non-interconnected VoIP traffic for which there is no telephone number.

Other proposed solutions, like factors or certifications,<sup>26</sup> will also be difficult to enforce and police, and will add additional – and unnecessary – cost to handling VoIP traffic. As with determining interstate vs. intrastate traffic, carriers will report factors to one another and then

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<sup>24</sup> See Vonage Comments at 5.

<sup>25</sup> See *Id.*

<sup>26</sup> Joint Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon, and Windstream at 35-36, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) ("*Joint ILEC Comments*"); Cox Comments at 7 (arguing that VoIP and non-VoIP should be treated the same, but if they are not, the distinction should be made using factors or a safe harbor); *accord* Comcast Comments at 20.

dispute as to whether those factors are correct. Using factors to identify VoIP traffic simply encourages carriers to exaggerate VoIP traffic and allows larger carriers to flex their market power by paying only whatever factor they want to pay.

Cox, as a second-best solution to treating VoIP in the same manner as all other traffic, suggests the possibility of using data from Form 477 to establish factors.<sup>27</sup> But it is not clear how this would work. Simply reporting customers as interconnected VoIP does not reflect the proportion of VoIP or non-VoIP traffic that a provider is receiving or handing off for termination. Moreover, this does not at all address the question of how VoIP traffic would be determined for wholesale providers, who are not directly connected to the calling or called party.

The idea of a safe harbor for VoIP traffic, as suggested in the Public Notice, was panned by the ABC companies themselves.<sup>28</sup> XO Communications, LLC (“XO”) likewise warns against use of “a safe harbor percentage of VoIP traffic” “because this percentage can vary greatly between carriers depending on their customers and services” – an observation which is undoubtedly correct.

Several commenters have argued that VoIP traffic should not be subject to access charges, but rather bill-and-keep, which, they claim, would fairly compensate for the “vanishingly small” marginal cost of delivering voice over IP and would best incentivize the transition to all-IP networks.<sup>29</sup> But this still begs the question of how to distinguish between

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<sup>27</sup> Cox Comments at 7.

<sup>28</sup> ABC Plan at 36.

<sup>29</sup> See Comments of Google Inc. at 16, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, and 06-122, GN Docket No. 09-51, and CC Docket Nos. 01-92 and 96-45 (filed Aug. 24, 2011) (“Google Comments”); Comments of Sprint Nextel Corporation at 17-20, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, CC Docket Nos. 01-92 and 96-45, and GN Docket No. 09-51 (filed Aug. 24, 2011) (“Sprint Comments”); Vonage Comments at 4.

VoIP and non-VoIP calls. Furthermore, as explained above, any distinct system for VoIP calls will only serve to encourage providers that are able to game the system to do so.

**III. To Be Equitable Among All Carriers, the Commission Must Adjust the Step-Down Timetable to Avoid Placing Disproportionate Burden of Reforms on CLECs as Compared with ILECs, and to Avoid a Flash Cut of Transport Rates in the Final Step.**

**A. Length of CLEC Inter-carrier Compensation Transition Should Be Adjusted.**

As Level 3 explained in its initial comments, an extended step-down to a lower, unified inter-carrier compensation rate is essential to allow CLECs and other non-ILECs to adjust business plans and replace revenue streams in a timeframe similar to that afforded the ILECs, particularly the price cap LECs. The proposed changes in terminating rates, particularly for end office termination, will dramatically reduce inter-carrier compensation revenues for all entities that tariff access charges today. The current proposed access replacement support mechanisms provide a transition for ILECs until at least 2020 to acclimate to these changes, while CLECs must do so by 2017 without access replacement support. The negative effects of the transition can be fairly mitigated for all stakeholders by extending the inter-carrier compensation reform timetable suggested in the Joint RLEC framework by adding one year and then applying that schedule to all carriers, as suggested in Level 3's initial comments, which would bring all LECs to terminating end office rates of \$0.0007/minute on July 1, 2020.<sup>30</sup>

A broad consensus of commenters agrees that such a transition for all carriers would be more equitable. For example, TWC advocates for a six to eight year transition that "would unify all terminating access rates to the current interstate rates by July 1, 2013" and then begin a second phase to bring the uniform rate to \$0.0007 by July 1, 2017, with a slightly longer

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<sup>30</sup> Level 3 Comments at 8-9.

transition for rate-of-return carriers.<sup>31</sup> Other commenters agree that a “gradual, incremental step-down of rates to current Section 251(b)(5) rates is the best means to ensure pro-competitive intercarrier compensation reform.”<sup>32</sup> Cbeyond, Integra, and tw telecom argue that the proposed initial eighteen month transition for the reduction of intrastate terminating access rates to interstate terminating access rates is far too short to allow CLECs to adjust to the substantial reductions in their intrastate terminating access revenues in many states.<sup>33</sup> Similarly, Comptel argues that the ABC Plan’s imposition of the “*full* decline in intercarrier compensation revenues on a CLEC in the first five years, with no additional transitional window to adjust its business plan” unfairly disadvantages non-ILECs.<sup>34</sup> A gradual eight-year transition for CLECs, coupled with a reduction of the access recovery mechanism “by imputing the same SLC increase to multi-line business lines that the ABC plan grants for single-line service” would resolve the inequity.<sup>35</sup>

**B. Fixed Monthly Rates Should also Be Reduced in the Transition, Rather than Flash Cut to \$0 for Tandem Interconnected Traffic.**

The ABC Plan has an odd transition plan for transport rates. In the first two years (steps 1 and 2), switched transport rates are unified at interstate access rate levels. For the next three years (steps 3, 4 and 5), all switched transport rates are frozen. Then, in the final transition year (step 6), transport rates for traffic handed to a tandem owner for delivery to the tandem owner’s end user customer are effectively flash-cut to \$0, as the \$.0007 per minute rate for terminating end office local switching is extended to cover all transport and termination by the terminating carrier within the

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<sup>31</sup> Time Warner Cable Comments at 6-7.

<sup>32</sup> Pac-West Comments at i, 2-5. *See also* Earthlink Comments at 20-21.

<sup>33</sup> Comments of Cbeyond, Integra, and tw telecom at 2.

<sup>34</sup> Comptel Comments at 21.

<sup>35</sup> *Id.*

tandem service area when the terminating carrier owns the tandem.<sup>36</sup> The ABC Plan proponents do not explain why this abrupt transition makes sense.

Many parties criticize the ABC Plan's treatment of transport, including the fixed charges per month for elements such as end office trunk ports, tandem ports, direct trunk transport, multiplexing and entrance facilities. NCTA, Google, Comcast, Vonage, Pac-West and Earthlink all argue that the ABC Plan must be amended to reduce transport charges as well as variable end office charges such as local switching and information surcharge.<sup>37</sup>

A better, more rational plan would be to reduce the charges for fixed charge per month elements, such as end office trunk ports, tandem ports, direct trunk transport, multiplexing and entrance facilities in equal steps, beginning once intrastate and interstate access rates have been unified (i.e., a four step transition to \$0 under the ABC Plan and a six-step transition under the RLEC and Level 3 timelines). This would create a smooth downward glide path to the elimination of these charges in the sixth year (under the ABC Plan, ninth under Level 3's plan).

Level 3 does not agree that tandem switching charges need to be reduced.<sup>38</sup> Tandem switching itself is a much more competitive market. With all the other changes being made, this market will likely become even more competitive. In any event, under the ABC Plan, ILECs would not be permitted to raise their tandem rates.<sup>39</sup>

#### **IV. Conclusion**

The Commission must ensure that intercarrier compensation reform is equitable. It should close opportunities for arbitrage rather than create new ones. To prevent carriers from

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<sup>36</sup> ABC Plan at 11.

<sup>37</sup> NCTA Comments at 19-20, Attachment at 8-9; Google Comments at 18; Comcast Comments at 12-13; Vonage Comments at 7-8; Pac-West Comments at 4-5; and Earthlink Comments at 25-26.

<sup>38</sup> See e.g. NCTA Comments at 19-20, Attachment at 8-9; Comcast Comments at 12-13.

<sup>39</sup> ABC Plan at 11.

