WILTSHIRE & GRANNIS LLP

October 6, 2011

Ex Parte

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

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

Dear Ms. Dortch,

On Tuesday, October 4, 2011, Sarah Baack, Senior Vice President, Voice Services, Mike Mooney, Senior Vice President, and Group General Counsel, Mack Greene, Director, Voice Services and Erin Boone, Senior Corporate Counsel, Federal Regulatory Affairs, of Level 3 Communications and I, also on behalf of Level 3, met separately with:

- Margaret McCarthy, Wireline Policy Advisor to Commissioner Michael Copps;
- Zachary Katz, Chief Counsel and Senior Legal Advisor to Chairman Julius Genachowski and Al Lewis, Chief, Pricing Policy Division of the Wireline Competition Bureau;
- Angela Kronenburg, Wireline Legal Advisor to FCC Commissioner Mignon Clyburn; and
- Christine Kurth, Policy Director and Wireline Counsel for FCC Commissioner Robert McDowell.

The points presented by Level 3 participants are summarized in the attached written presentation, which was distributed to all of the attendees. We emphasized that while Level 3 has long supported intercarrier compensation reform, the ABC Plan, and ILEC framework in general, are not balanced proposals, but are significantly tilted in favor of the ILECs. Addressing each of the areas raised in the attached presentation would redress at least some of the pro-ILEC tilt and, more importantly, preserve the competitive landscape to the ultimate benefit of consumers. Level 3 addressed the following areas: clarifying who can receive "end office" access compensation; finding a clear, consistent and enforceable way to address VoIP traffic; (preferably by treating VoIP and TDM the same but adjusting proposed rate declines to effectuate the same overall economics of the ABC Plan); moving CLECs to the rate-of-return transition rather than the price cap ILEC transition; and closing predictable access arbitrage opportunities so that access revenue compression does not immediately manifest itself through higher charges for other elements.

Since Level 3's meetings, Comcast, Time Warner Cable and Cox Enterprises ("Comcast *et al.*") filed a joint proposal addressing the issue of who provides the "functional equivalent" of end office service.[1] Level 3 supports the rules proposed by Comcast *et al.* as sensible ways to ensure that LECs partnering with VoIP providers can receive access compensation for the same call flow, as do incumbent LECs. Some ILECs have been advancing "heads I win, tails you lose" positions: for calls from a VoIP provider's caller through a CLEC to a called party on their network they assess switched end office termination charges, but when the call is made in the opposite direction, from their subscriber, through the CLEC to a VoIP provider's subscriber, they refuse to pay switched end office termination charges claiming lack of "functional equivalence." Comcast *et al.*'s proposed rules would make clear that switched end office termination charges can be assessed symmetrically. The change Comcast proposes to § 61.26, which states that a CLEC provides exchange access services when it is listed in the Number Portability Administration Database as providing the calling party or dialed number, will also help address other types of disputes plaguing the industry. At its most fundamental level, the entity that provides the core "end office" function in today's myriad of potential service architectures, is the entity to which all call bound for a particular telephone number must be delivered.

Level 3 suggests one clarifying amendment to Comcast *et al.*'s proposed new Section 51.704 of the Commission's rules. At the end of the last sentence of the section, after the words "facilities-based VoIP provider," add "or, for charges other than carrier common line, a non-facilities-based VoIP provider." This will make clear that portable SIP-based voice services are treated in the same manner as all other voice services with respect to those charges that are not associated with providing loop transmission.

Sincerely,

John T. Nakahata
Counsel to Level 3 Communications, Inc.

cc: Zachary Katz
Angela Kronenburg
Christine Kurth
Al Lewis
Margaret McCarthy
Sarah Baack
Erin Boone
Mack Greene
Mike Mooney

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[1] Letter of Mary McManus, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed October 5, 2011).

Intercarrier Compensation and the "ABC Plan"

Level 3 Communications, LLC

October 4, 2011

Clarify End Office Access Compensation Eligibility

- Establish bright line test defining when a LEC is eligible for end office switching access, stating that a LEC provides end office service
  - if it is identified in the NPAC database as providing the calling party or dialed number
  - ICC reform should establish the rights of CLECs to collect terminating access charges where they provide (a) wholesale telecommunications services to facilities-based or over the top interconnected VoIP providers, or (b) VoIP services directly to the calling/called party.
- Large carriers seek to avoid access charges by claiming that wholesale providers do not provide end office functionality
- The Competitive Industry shares Level 3's concerns about Large Carrier end office service arbitrage:

Time Warner Cable –

> *"Commission should update and broaden its definition of "interstate switched exchange access services" to make clear that such services include the termination of interexchange telecommunications traffic to any end user—including a retail customer or a provider of VoIP services—regardless of the specific functions provided."*

Comcast –

> *Plan "refers to 'end offices,' a term that typically is used to describe TDM-based switches that incumbent LECs deploy in their local networks. VoIP service providers and their competitive LEC partners, in contrast, do not use TDM-based switches to terminate traffic. Thus, the ABC Plan proposal could be interpreted to mean that voice traffic that is terminated on a VoIP network is not covered by that reform plan."*

NCTA –

> *"[B]y making clear that traffic that 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."*

Converge VoIP and TDM Traffic Step Downs

- Identifying and Distinguishing VoIP Traffic Cannot Be Easily Implemented or Enforced
  - Commenters do not agree on common definition of VoIP
  - Each proposed solution to identify VoIP would still leave all traffic claimed to be VoIP subject to disputes and litigation
- The Competitive Industry shares Level 3's concerns about ABC's VoIP transition:

Cablevision –

> *"VoIP and circuit-switched traffic should be treated the same for intercarrier compensation purposes, including during any transition period."*
>
> *"[T]here is no reliable way to verify whether any given call exchanged in TDM format has used VoIP technology at any point in the call path."*

Pac-West –

> *"Only months before the ABC Commenters would recommend implementation, there is no consensus as to how to identify "VoIP traffic."*

Bright House –

> *The "FCC should not adopt the proposal in the ILEC ABC Plan that would establish a separate, much lower intercarrier compensation rule for intrastate toll traffic that originates or terminates with an interconnected Voice over Internet Protocol ("VoIP") service during the 18-month transition period proposed to commence on January 1, 2012."*

Cbeyond, Integra, TWTC –

> *The "proposed treatment of interconnected VoIP traffic would increase the amount of foregone intrastate access revenues that Price Cap ILECs, but not their competitors, would be able to recover from the access replacement mechanism."*

"ABC" Step-Down Should Be Competitively Neutral

- Adjust Step-Down to Avoid Disproportionate Burden on Certain Carriers
  - Access replacement support provides transition for price cap ILECs until 2020 (and without an end date for rate-of-return ILECs)
  - CLECs must adjust by 2017 without access replacement support
- Avoid Flash Cut of Transport Rates
  - Reduce charges for fixed charge per month elements (end office trunk ports, tandem ports, direct trunk transport, multiplexing and entrance facilities) in equal steps, once intrastate and interstate access rates have been unified
  - Tandem switching market is competitive and reduction in charges is not necessary
- The Competitive Industry shares Level 3's Concerns about a competitively neutral step-down of rates

PAETEC –

> *"The FCC should tailor the glide path to minimize sudden revenue losses that could harm a CLEC's ability to provide competitive broadband."*

COMPTEL –

> *"Establish a competitively neutral transition plan to reduced intercarrier compensation rates by providing CLECs the same effective time-period to adjust to lower intercarrier compensation revenues that the plan provides the incumbents."*

Earthlink –

> *"Because the ABC Plan's glide path discriminates against competitors, the FCC should adopt a straight line transition for non-ILECs from each current rate to the final rate on July 1, 2020."*

Pac-West

> *"There is also broad competitive support . . . for a longer, more equitable transition to Section 251(b)(5) rates for competitive carriers."*

Close Additional Compensation Loopholes

- Beyond Phantom Traffic and Traffic Pumping, Arbitrage Loopholes Can and Should Be Eliminated.
  - Prohibit "mileage pumping" by limiting LECs to charging for transport from end office switch (or equivalent) to nearest ILEC tandem
  - Benchmark CLEC database query charges to competing ILEC's charges
  - Clarify application of the CLEC Access Charge Benchmark when the CLEC serves end user with a single switch and provides common transport to ILEC tandem
  - Preclude CLECs from inflating access charges by amortizing elements billed on fixed monthly recurring basis, such as end office port charges, to create per minute rates not in ILEC's tariffed rates

Thank you