



October 24, 2011

**Ex Parte Notice – Reply Pursuant to 47 CFR § 1.1206(b)(2)(iv)**

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

Re: *Connect America Fund*, WC Docket No. 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

Dear Ms. Dortch:

Level 3 Communications, LLC (“Level 3”), pursuant to 47 C.F.R. § 1.1206(b)(2)(iv), hereby replies to the written ex parte filed by AT&T on October 21, 2011, the day that the Sunshine period became effective. It is surprising (or maybe not) that AT&T waited until the day the Sunshine restrictions took effect to file a response to arguments that Level 3, Comcast and Time Warner Cable presented in comments on August 24, and that Comcast *et al.* also advanced, along with submitting proposed rules, in ex partes dated September 22, 2011 and October 5, and again in more recent ex partes.<sup>1</sup> The Commission should not such tolerate such dilatory attempts at sandbagging the record.

In any event, AT&T makes several arguments, all of which are wrong.

---

<sup>1</sup> See, e.g., Comments of Level 3 Communications Inc., WC Docket Nos. 10-90 *et al.*, at 6, 21-24 (filed Aug. 24, 2011); Reply Comments of Level 3 Communications Inc., WC Docket Nos. 10-90 *et al.*, at 4-6 (filed Sept. 6, 2011); Comments of Comcast Corp., WC Docket Nos. 10-90 *et al.*, at 5-9 (filed Aug. 24, 2011); Comments of Time Warner Cable, WC Docket Nos. 10-90 *et al.*, at 9-10 (filed Aug. 24, 2011); Letter of John T. Nakahata, Counsel for Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.*, Attachment at 2 (filed Sept. 16, 2011); Letter from Mary McManus, Senior Counsel, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (filed September 22, 2011); Letter from Mary McManus, Senior Counsel, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (filed October 5, 2011). Letter from Mary McManus, Senior Counsel, Comcast, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (filed Oct. 17, 2011); Letter from Mary McManus, Senior Counsel, Comcast et al., to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 *et al.* (filed Oct. 21, 2011).

First, as AT&T well knows, the situation that Level 3, Comcast, Time Warner and Cox Communications have addressed stems from an asserted “ambiguity” that AT&T has recently manufactured.<sup>2</sup> AT&T is attempting to secure the asymmetric (in its favor) payment of access charges under Rule 61.26(f), which the FCC has said focuses on equivalent *functionality*<sup>3</sup> not (as AT&T’s arguments imply) that functions be performed in exactly the same way as does the ILEC. Notwithstanding the fact that each of Level 3, Comcast, Time Warner Cable, Cox and other similarly situated entities, controls the routing of traffic to a called party or from a calling party – just as AT&T does – AT&T is attempting to claim that because last mile transmission is handled by a different corporate entity, this means that AT&T can charge an end office switching access charge, but these other parties cannot. AT&T conveniently skips over the fact that under its interpretation, a call from a calling party, Party A, served by Level 3, to Party B, an AT&T subscriber, that crosses exchange boundaries would be subject to end office access charges levied by AT&T, but an identical call that originated with Party B on AT&T’s network and terminated to Party A on Level 3’s network (or that of its wholesale VoIP provider, non-carrier customer) would not. Rule 61.26(f) should not be read to mandate such an asymmetrical, “heads I win, tails you lose” result for favoring the ILECs, including AT&T. Certainly, there are many situations on AT&T’s own TDM networks in which terminating calls may be routed (such as at a remote terminal or PBX) after they pass through AT&T’s end office switch. AT&T would obviously never assert that the presence of the remote terminal or PBX changes the functionality being performed by AT&T’s end office switch or that it eliminates AT&T’s ability to charge local switching access charges for the functions performed by its end office switch. However, that seems to be what AT&T is saying here. The PBX is a particularly appropriate example because the PBX owner, like Level 3’s wholesale VoIP customer, is an end user of the LEC’s service, and is not another carrier.

Second, AT&T remarkably tries to argue that clarifying when CLECs serving VoIP providers can receive end office access charges would somehow discriminate against CMRS providers. This is a complete red-herring. This is not an issue of VoIP versus CMRS, but, rather, an issue of the rights and duties of LECs (whether incumbent LECs or competitive LECs) versus CMRS providers. In the Omnibus Budget Reconciliation Act of 1993, Congress differentiated CMRS providers from LECs, and made clear that states cannot regulate rates charged by CMRS providers, including the tariffing of intrastate access rates.<sup>4</sup> Furthermore, in the *CMRS Second Report and Order*, the FCC mandatorily forbore from all tariffing requirements for CMRS, including specifically with respect to access services, an action it has never taken with respect to CLEC services in support of VoIP.<sup>5</sup> AT&T’s argument here would

---

<sup>2</sup> AT&T for years paid the end office access charges it now asserts are proscribed.

<sup>3</sup> See *In the Matter of Access Charge Reform- Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order, 19 FCC Rcd. 9108, 9114 ¶ 13 (2004).

<sup>4</sup> See 47 U.S.C. § 332(c)(3).

<sup>5</sup> See *Implementation of Sections 3(n) & 332 of the Communications Act*, 9 FCC Rcd. 1411, 1480 ¶ 179 (1994)(“We also will temporarily forbear from requiring or permitting CMRS

