

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

In the Matter of	)	
	)	
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
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**LEVEL 3 COMMUNICATIONS, LLC, COMMENTS ON  
SECTIONS XVII.L-R OF THE CAF/ICC  
FURTHER NOTICE OF PROPOSED RULEMAKING**

Level 3 Communications, LLC (“Level 3”), hereby comments in response to subsections L through R of Section XVII of the *Connect America Fund Order and Further Notice of Proposed Rulemaking*.<sup>1</sup> Level 3 addresses two subjects of the *FNPRM*:

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<sup>1</sup> *Connect America Fund; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Lifeline and Link-Up; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; A National Broadband Plan for Our Future; Universal Service Reform – Mobility Fund, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, (rel. Nov. 18, 2011) (“FNPRM”).*

- The Commission should not embark on strict regulation of transit prices. Although the market is “thin” in some areas due to the limited amount of traffic to those areas, the market is and can be competitive in most areas, and it is difficult to draw a line between those that are and can be competitive and those that cannot be competitive without freezing competition where it exists.
- Further reform of transport and termination needs to be coordinated with originating access changes, especially with respect to fixed facilities, such as dedicated transport and entrance facilities, that are used for both originating and terminating access. Reducing terminating rates without changes in originating rates for these elements will create an unworkable situation for billing for two-way fixed facilities.

**I. TRANSIT RATE REGULATION IS PREMATURE AND COULD STIFLE THE EMERGENCE OF TRANSIT COMPETITION.**

Paragraphs 1312 and 1313 of the *FNPRM* seek comment on whether the Commission should embark on strict cost-based price regulation of transit services. The Commission should not do so. As Level 3 previously stated, “*TELRIC* rates here could harm the development of competition in transit services.”<sup>2</sup> Transit competition has developed in many areas and is still expanding. Imposing *TELRIC* price regulation now would freeze the development of transit competition.

As the Commission has recognized, the “availability of transit service is ...critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act.”<sup>3</sup> “[I]ndirect interconnection via a transit service provider is an efficient

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<sup>2</sup> Comments of Level 3 Communications, LLC on Intercarrier Compensation and Universal Service Reform, at 19, WC Docket Nos. 10-90 et al. (filed Apr. 18, 2011).

<sup>3</sup> *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd. 4685, 4740 ¶ 125 (2005).

way to interconnect when carriers do not exchange significant amounts of traffic.”<sup>4</sup> As an interstate telecommunications service, transit rates must be “just and reasonable.”<sup>5</sup>

The Commission should reaffirm that ILECs have a duty directly to interconnect with transit providers, as with any other telecommunications carriers, and that they cannot prohibit a carrier with whom they have direct interconnection from providing transit services. Section 251(c)(2) unambiguously requires ILECs to interconnect with any requesting telecommunications carrier “for the transmission and routing of telephone exchange service and exchange access.”<sup>6</sup> Competing transit services clearly constitute the “transmission and routing of telephone exchange service and exchange access,” and Section 251(c)(2) contains no limitations on ILECs’ obligations in instances in which the interconnected carrier does not directly serve either the calling or called party.<sup>7</sup> The Commission can also order ILECs to provide such physical interconnection pursuant to Section 201.<sup>8</sup>

This does not, however, mean that the ILEC should be required to provide transit services at TELRIC rates. Applying the just and reasonable standard, rather than imposing TELRIC, would be more appropriate to transit markets, which are not as difficult to enter as last-mile markets. This is essentially the approach that the Wireless Competition Bureau took in the *FCC Virginia Arbitration Order*, when the Bureau ordered the inclusion of language requiring the ILEC to provide transit services to the CLECs, but not at TELRIC rates.<sup>9</sup>

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<sup>4</sup> *Id.* ¶ 126.

<sup>5</sup> 47 U.S.C. § 201

<sup>6</sup> 47 U.S.C. § 251(c)(2)(A).

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

<sup>8</sup> *See* 47 U.S.C. § 201(a).

<sup>9</sup> *See Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding*

ILECs, however, also should be required to provide transit. In some areas, they are – and likely will continue to be – the only transit providers. Indirect interconnection cannot occur in these areas unless the ILECs, particularly those that own the tandems, provide it. Requiring the ILECs to provide transit under these circumstances is also consistent with the *Virginia Arbitration Order*.<sup>10</sup>

Similarly, ILECs should not be released from their obligations to file transit agreements with the state public utility commissions pursuant to Section 252(e), which requires all interconnection agreements to be approved by the state commissions. A transit agreement – which is an agreement to provide indirect interconnection – is an “interconnection agreement” under the plain meaning of those words in Section 252.<sup>11</sup>

## **II. FURTHER REFORM OF TRANSPORT AND TERMINATION MUST BE COORDINATED WITH REFORM OF RATES FOR TWO-WAY DEDICATED FACILITIES USED FOR BOTH TERMINATING AND ORIGINATING ACCESS.**

The *FNPRM* seeks comment on what further steps should be taken with respect to reform of transport charges, many of which are not altered after the interstate and intrastate access rates are unified.<sup>12</sup> In the current Order, the only change made after access rate unification is, for price cap carriers only, to reduce the transport component of transport and termination to bill-

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*Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., Memorandum Opinion and Order, CC Docket Nos. 00-218 and 00-249 and 00-251, 17 FCC Rcd 27039, 27100-02 ¶¶ 115-20 (2002).*

<sup>10</sup> See *id.* ¶ 118.

<sup>11</sup> 47 U.S.C. § 252(e)(1).

<sup>12</sup> See *FNPRM* ¶¶ 1306-1308.

and-keep when the price cap ILEC provides both tandem switching and end office services.<sup>13</sup>

Although Level 3 initially thought that terminating transport rates could be stepped down along with the terminating end office rates,<sup>14</sup> upon further reflection, Level 3 now believes that reductions in transport rates must be coordinated and synchronized with changes in originating access rates.

Examination of the current 2017-2018 transition of transport and termination rates from their then-current levels to \$0.0007/minute on July 1, 2017 and to bill-and-keep on July 1, 2018 illustrates the point. As long as the traffic is merely exchanged at the ILEC tandem with a carrier that physically interconnects its own interconnection trunk to the tandem, this regime is fairly simple to envision. However, if a carrier, for example, has interconnected at an ILEC end office or some other point beyond the tandem using a dedicated facility purchased from the ILEC, the question arises as to what rate should be charged for the use of that facility. For terminating traffic, to be consistent with bill-and-keep at the tandem, no charge should be levied. However, for originating toll traffic, originating access would still be due. The complication stems from the fact that in this scenario, a dedicated facility is typically used on a two-way basis to handle both originating and terminating traffic without metering usage.

It is not simply a solution to declare that the interconnecting carrier must be responsible for all transport on its side of the traffic exchange point. Were the Commission to go down that path, it would create a strong incentive for interconnecting carriers to discontinue end office interconnection and to push all traffic through the tandem in order to avoid the fixed monthly

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<sup>13</sup> See *FNPRM*, ¶ 801 (this transition starts on July 1, 2017 and is completed on July 1, 2018). Rate-of-return carriers face no transport rate reductions after interstate and intrastate access rates are unified. *Id.*

<sup>14</sup> See, e.g., Reply Comments of Level 3 Communications, LLC on the Universal Service-Intercarrier Compensation August 3, 2011 Public Notice, at 14-15, WC Docket Nos. 10-90 et al. (filed Sept. 6, 2011).

charges for dedicated transport to the end office. Such a change in network architecture would be inefficient and would threaten to overwhelm the tandems.

The Commission appears to have recognized this issue when it addressed the unification of intrastate and interstate access rates. Among the access rates that are unified in the first two steps of the transition (at least where intrastate access rates exceed interstate rates) are originating and terminating Dedicated Transport Access Service.<sup>15</sup> Dedicated Transport Access Service includes entrance facilities, dedicated transport and direct trunk transport, all of which are typically used on a two-way basis to handle both originating and terminating traffic.<sup>16</sup> As such, with respect to these dedicated facilities, when it sought to reduce terminating rates, it also reduced the originating rates in order to create a unified interstate/intrastate access rate schedule.

The *FNPRM*, however, provided no similar direction with respect to the migration of the transport component of transport and termination to bill-and-keep when the ILEC provides both the tandem and the end office. These issues will need to be addressed well in advance of July 1, 2017, so that carriers can plan for network rearrangements. Likewise, any additional transport rate changes would need to be synchronized between origination and termination such that the rates for the entire dedicated facility are reduced simultaneously, irrespective of the proportions used for origination and termination.

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<sup>15</sup> See 47 C.F.R. §§ 51.907(b), 51.909(b). The rates that are reduced are all Transitional Intrastate Access Service rates. Dedicated Transport Access Service is a component of Transitional Intrastate Access Service. See 47 C.F.R. §51.903(j).

<sup>16</sup> See 47 C.F.R. § 903(c).

### III. CONCLUSION

For the foregoing reasons, Level 3 urges the Commission to refrain from imposing TELRIC rates on ILEC-provided transit, and to synchronize further changes in dedicated transport rates with changes in originating access.

Respectfully submitted,



Erin Boone  
Senior Corporate Counsel,  
Federal Regulatory Affairs  
LEVEL 3 COMMUNICATIONS LLC  
1120 Vermont Avenue, N.W. Suite  
T1000  
Washington, DC 20005  
(202) 595-9905

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John T. Nakahata  
WILTSHIRE & GRANNIS LLP  
1200 Eighteenth Street, N.W.  
Washington, D.C. 20036  
(202) 730-1300

*Counsel for Level 3 Communications, LLC*

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