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VIA ELECTRONIC FILING

EX PARTE

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

Re: *WC Docket No. 10-90, Connect America Fund; GN Docket No. 09-51, National Broadband Plan for our Future; WC Docket No. 07-135, Establishing Just and Reasonable Rates for Local Exchange Carriers; WC Docket No. 05-337, High-Cost Universal Service Support; CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime; CC Docket No. 96-45, Federal State Joint Board on Universal Service; WC Docket No. 03-109, Lifeline and Link-Up, Universal Service Reform – Mobility Fund, WT Docket No. 10-208*

Dear Ms. Dortch,

Level 3 Communications, LLC files this ex parte in response to a recent letter¹ (“Joint Letter”) filed by Cbeyond, Earthlink, Frontier, Integra Telecom, the National

¹ See Letter from Frontier *et al* to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, *WC Docket No. 10-90, Connect America Fund; GN Docket No. 09-51, National Broadband Plan for our Future; WC Docket No. 07-135, Establishing Just and Reasonable Rates for Local Exchange Carriers; WC Docket No. 05-337, High-Cost Universal Service Support; CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime; CC Docket No. 96-45, Federal State Joint Board on Universal Service; WC Docket No. 03-109, Lifeline and Link-Up, Universal*

Cable & Telecommunications Association, the National Telecommunications Cooperative Association, tw telecom, and Windstream (“Parties”), addressing the treatment of originating access charges in the *CAF Order*.² The Parties state that they believe the Commission should resolve the dispute about VoIP-PSTN originating access charges by “stating that all originating access charges are subject to the same treatment pending further reform.”³

While Level 3 agrees with the compromise achieved concerning a symmetrical compensation scheme for both TDM-based and VoIP-based service providers, it ultimately believes that the Commission should reject the agreed upon proposal, which would require the Commission to reverse course on the VoIP-PSTN traffic rules it adopted in the *CAF Order*, and apply the legacy access charge regime to VoIP-PSTN traffic. Level 3 therefore also disagrees with the Parties that such action would simply be a “clarification” of the current rules. This action would clearly be a change in the Commission’s recently-adopted rules.

In the Joint letter, the Parties specifically state that they have agreed that the Commission should find that “for price cap carriers and competitive LECs that benchmark access rates to price cap carriers, intrastate originating access rates for VoIP-PSTN traffic would be capped at the intrastate originating access rates in effect prior to December 29, 2011, the effective date of the *CAF Order*.”⁴ The parties also agree that “[c]onsistent with the *CAF Order*, the Commission would place no limits on intrastate originating access rates for rate-of-return carriers and competitive LECs that benchmark to rate-of-return carriers pending further action by the Commission.”⁵

While Level 3 agrees that a symmetrical compensation scheme is important, it strongly disagrees that the intrastate access charge regime should now be applied to VoIP-PSTN traffic. Any decision by the Commission to reconsider and change its rules to impose the legacy access charge regime upon VoIP-PSTN traffic at this point only exacerbates the uncertainty surrounding VoIP-PSTN traffic and would ultimately undo much of the Commission’s efforts to reform the intercarrier compensation regime. Carriers have struggled to implement the current VoIP-PSTN compensation structure in reliance upon the Commission’s current rules, within an extremely short timeframe, and have invested heavily in implementing those rules. For instance, Level 3 has relied upon the Commission’s new rules to market and sell services to IP-based toll-free customers, assuming that the clear language of the order applies the interstate rate to *all* VoIP-PSTN

Service Reform –Mobility Fund, WT Docket No. 10-208, (filed Mar. 8, 2012) (“Joint Letter”).

² *Connect America Fund, et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*CAF Order*).

³ Joint Letter at 3.

⁴ *Id.*

⁵ *Id.*

traffic. Retracting these services would create significant challenges not only for Level 3, but for the business customers that Level 3 serves. Furthermore, as recently noted by Verizon, Level 3 agrees that the change called for by the Parties would serve as a disincentive to migrate customers to IP platforms in order for carriers to continue charging higher intrastate originating access rates.⁶

Despite the deviation proposed within the Joint Letter, the bulk of the industry has been in agreement that originating access charges for all VoIP-PSTN traffic are and should continue to be subject to interstate rates, not intrastate rates. As Level 3 stated in its opposition to certain Petitions for Reconsideration,⁷ the express rule adopted by the Commission is clear: the toll VoIP regime applies to traffic “exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format”⁸ Verizon also notes in its recent comments in response to the *FNPRM*⁹ that the Commission explicitly stated that “toll VoIP-PSTN traffic will be subject to charges not more than originating and terminating *interstate access rates* [emphasis added].”¹⁰ And on March 6, 2012, Comcast representatives argued to the Commission that the *CAF Order* “plainly

⁶ Letter from Maggie McCready, Vice President, Federal Regulatory Affairs, Verizon to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (filed Mar. 2, 2012) at 2.

⁷ Opposition of Level 3 Communications, LLC to Petitions for Reconsideration by the National Exchange Carrier Association, Organization for the Promotion and Advancement of Small Telecommunications Companies and Western Telecommunications Alliance, Frontier Communications Corporation and Windstream Communications, Inc., and the United States Telecom Association, WC Docket No. 10-90 *et al* (filed Dec. 29, 2011) at 6.

⁸ 47 C.F.R. § 51.913(a). Originating or terminating in IP format is defined as, “originat[ing] from and/or terminat[ing] to an end-user customer of a service that requires Internet protocol compatible customer premises equipment.” *Id.*

⁹ *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*”).

¹⁰ Comments of Verizon, WC Docket No 10-90 *et al* (filed Feb 24, 2012) at 4, citing the *CAF Order* at ¶ 961.

mandates that the default rates applicable to such originating intrastate toll traffic are the originating carrier's interstate access rates.”¹¹

The Commission dealt with the issue of originating access charges for VoIP-PSTN traffic in the *CAF Order*, establishing an explicit regime for all such traffic for the first time.¹² Level 3 believes that the Commission should reject calls to reconsider its rules, and decide against injecting additional legal and financial uncertainty into an industry that is already struggling to implement the current rules adopted in the *CAF Order*.

Sincerely,

/s/: Erin Boone

Erin Boone

¹¹ Letter from A. Richard Metzger, Counsel to Comcast, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al* (filed Mar. 8, 2012) at 2.

¹² 47 C.F.R. § 51.913(a).