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JUN 28 2012

Federal Communications Commission
Office of the Secretary

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Via ECFS and Hand Delivery

EX PARTE

June 28, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access NPRM, WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

On June 27, 2012, Michael Mooney, General Counsel, Regulatory Policy, Gary Black, Vice President, Carrier Relations, and the undersigned, of Level 3 Communications, LLC ("Level 3") met with Deena Shetler, Eric Ralph, Nicholas Alexander, Andrew Mulitz, Kenneth Lynch, Jamie Susskind, Joseph Lilly and Maxwell Slackman of the Wireline Competition Bureau, to discuss Level 3's recent special access ex parte submitting data into the Commission's record in the above referenced proceeding, as requested by the Bureau.[1] That discussion is summarized in the attached PowerPoint presentation, which was distributed to the meeting participants. During the meeting, Level 3 also emphasized that if the Commission were to take action to implement the remedies discussed in the presentation below, that Level 3, alone, would

[1] *See* Letter from Michael Mooney, General Counsel, Regulatory Policy, Level 3 Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 05-25 and RM-10593 (filed June 8, 2012) ("June 8 Ex Parte").

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save approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** per year in special access expenditures.

Enclosed for filing are two (2) copies of the redacted version of this ex parte. In addition, as required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings.

Please direct any questions regarding this matter to the undersigned.

Sincerely,

/s/ Erin Boone

cc: Meeting Participants (via email)
Deena Shetler
Eric Ralph
Nicholas Alexander
Andrew Mulitz
Kenneth Lynch
Jamie Susskind
Joseph Lilly
Maxwell Slackman

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Evidence that the Special Access Market is Not Competitive, and A Way to Remedy It

WC Docket No. 05-25 and RM-10593

June 27, 2012

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Background

- In February, Level 3 discussed whether the Commission would need to find that the price cap LEC's have market power before it could find that "lock-up" contracts are unjust and unreasonable under Section 201 of the Act.

- The Commission also suggested Level 3 put into the record facts specific to Level 3 demonstrating either the lack of competition in the special access market, the price-cap LECs' exercise of market power, or both.

- Since that February meeting, the ILECs have inundated the Commission with filings and meetings, encouraging inaction until more data is gathered, arguing that "lock-up" plans are commercially reasonable, that the market is competitive, and informing the Commission that special access is irrelevant given the growth of Ethernet.

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The Special Access Market Is and Will Continue to Be A Multi-Billion Dollar Industry

- Special access is an $18+ billion market.
- Many in the industry have noted that they do and will continue to buy tens of thousands of special access circuits each year.
  - Level 3
  - Sprint
  - twtc
  - Ad Hoc Telecommunications Users Committee
- If the special access market is getting smaller:
  - Why are the ILECs fighting so hard against reform?
  - It does not legitimize anticompetitive conduct.

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The Record is Full of Evidence of Market Power

- The Commission need not find market power to declare "lock-ups" unlawful.
- However, between 2003 and 2009, there were multiple findings that the ILECs have dominant positions in the special access marketplace:
  - 2003, the Commission observes that only "between 3% and 5% of the nation's commercial office buildings are served by competitor-owned fiber loops."
  - 2004, Commission economists conclude that price-cap LECs have market power in supplying special access service and had taken advantage of that power.
  - 2006, GAO study on the presence of competitors in commercial buildings suggests that competitors are serving, on average, less than 6% of the buildings with at least a DS-1 level of demand (94% non-competitive) and 15% of buildings with a DS3 level of demand.
  - 2009, NRRI study finds that ILECs still have strong market power in most geographic areas, particularly for channel terminations and DS-1 services.
- Presently, Level 3 still buys **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of its DS1s from the incumbents.
- Presently, Sprint still buys ~90% of its DS1s from incumbents.
- Under any antitrust analysis, the facts support a conclusion of market power.

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An Interesting Point on Pricing

- In a June 19, 2012 Letter to the Commission, AT&T references its June 5, 2012 Blog where it notes that: "The services in question are called 'special access' services – 95% of which are slow 1.5 megabits per second (Mbps) TDM (think POTS) services. That is not a misprint. We are not talking about 100 Mbps connections – services we should actually be figuring out how to get to more people in more places. We are not even talking about fiber. We are talking about legacy, copper-based services that are so slow the services would not qualify for a single dollar of Universal Service Fund (USF) support if they were deployed to homes throughout rural America under the Commission's recent USF order."
- A 3 Mbps broadband connection sold by AT&T (U-verse) in Dearborn, MI is $14.95/mo for 12 months. http://www.attsavings.com/dearborn-att-michigan-internet-deal.html
- Level 3 pays AT&T**[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** for a DS-1 in Dearborn MI, on a12 month term and only after agreeing to a lock-up.

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