KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

Ex Parte

July 16, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, RM-10593

Dear Ms. Dortch:

I am writing in response to recent ex partes filed by Level 3,[1] tw telecom,[2] and the Ad Hoc Telecommunications Committee ("Ad Hoc").[3] These parties continue to mischaracterize Verizon's special access offerings and distort the evidence of special access competition.

---

[1] Letter from Michael J. Mooney, Level 3, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (June 8, 2012) ("Level 3 June 8 Ex Parte"); Letter from Michael J. Mooney, Level 3, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (June 27, 2012) ("Level 3 June 27 Ex Parte").

[2] Letter from Thomas Jones & Matthew Jones, Willkie Farr & Gallagher, LLP, Counsel for tw telecom inc., to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (June 5, 2012) ("tw telecom June 5 Ex Parte").

[3] Letter from Colleen Boothby, Levine Blaszak Block & Boothby, Counsel for Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (June 15, 2012) ("Ad Hoc June 15 Ex Parte").

REDACTED – FOR PUBLIC INSPECTION

As Verizon has demonstrated, Verizon offers many different special access discount plans that provide substantial benefits to a wide range of special access purchasers.[4] Verizon's plans enhance competitive choice.

Verizon's entirely voluntary discount plans contain a wide range of terms and conditions to meet the needs of many different types of special access purchasers.[5] These plans do not restrict customers' ability to obtain high-capacity services from Verizon's competitors or through self-supply.[6] In fact, customers who participate in Verizon's discount plans and pricing flexibility contracts may, and in fact do, obtain high-capacity services from several different providers as well as through self-supply without penalty under Verizon's terms.[7]

---

[4] *See* Letter from Maggie McCready, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (June 6, 2012) ("Verizon June 6 Ex Parte"); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593, Attachment 1 at 12 (May 2, 2012) ("Verizon May 2 Ex Parte"); Revised Letter from Donna Epps, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Apr. 26, 2012) ("Verizon Apr. 26 Ex Parte"), *attached to* Letter from Donna Epps, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Apr. 26, 2012); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Mar. 27, 2012) ("Verizon Mar. 27 Ex Parte"); Letter from Maggie McCready, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Sept. 6, 2011) ("Verizon Sept. 6, 2011 Ex Parte"); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (July 14, 2011) ("Verizon July 14, 2011 Ex Parte"); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Feb. 28, 2011) ("Verizon Feb. 28, 2011 Ex Parte"); Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593 (Aug. 16, 2010) ("Verizon Aug. 16, 2010 Ex Parte").

[5] *See* Verizon Apr. 26 Ex Parte at 1; Verizon Mar. 27 Ex Parte at 3; Verizon July 14, 2011 Ex Parte at 1-2; Verizon Feb. 28, 2011 Ex Parte at 3; Verizon Aug. 16, 2010 Ex Parte at 2-3; Letter from Donna Epps, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-25, Attachment at 3 (Oct. 27, 2009).

[6] *See* Verizon May 2 Ex Parte, Attachment 1 at 12; Verizon Mar. 27 Ex Parte at 3, 9; Verizon July 14, 2011 Ex Parte at 1-2 & Exhibit A; Verizon Feb. 28, 2011 Ex Parte at 2-3; Verizon Aug. 16, 2010 Ex Parte at 2, 7 & Attachment A; Letter from Donna Epps, Verizon, to Marlene Dortch, FCC, WC Docket No. 05-25, Attachment at 3 (Oct. 27, 2009).

[7] *See*, *e.g.*, Transcript of Bloomberg's Investor Day Conference, Day 2 (Mar. 18, 2010) (Brian Kilpatrick, CFO, T-Mobile: "over 40% of the cell sites we have today in 3G, are deployed now with alternative backhaul providers meaning, not with traditional landline [Verizon] or AT&T."); Carol Wilson, *Sprint To Reveal Backhaul Contract Winners Friday*, Light Reading (Oct. 5, 2011), http://www.lightreading.com/document.asp?doc_id=213050 ("Also, [Sprint VP of Roaming and Access Planning Paul Schieber] said Sprint will end up with '25 to 30 significant backhaul providers' that will likely be a mix of incumbent LECs, cable MSOs and alternative carriers, all of whom will be expected to deliver Ethernet predominantly over fiber for Sprint's

These special access discount plans benefit both Verizon and customers because they reflect the economic efficiencies associated with the additional predictability and certainty they provide.[8] Customers can choose from term-only or term-and-volume plans; both types of plans offer comparable discounts.

1. Verizon's Term-and-Volume Plans Offer Customers Flexibility To Manage Their Networks

As previously explained, Verizon offers a range of discounts plans under which a customer agrees to maintain, for the plan's duration, a specified percentage of the volume that it purchases from Verizon at the time it enrolls in the plan.[9] These plans do not require customers to enroll any particular percentage of their total purchases from all sources and providers in the plan. In exchange for their volume commitments under these plans, customers also receive added flexibility. Customers are not required to keep any particular circuit in service during the selected term, but may instead disconnect and move circuits across the applicable region – or nationwide in the case of Verizon's National Discount Plan (NDP) – provided that the customer satisfies the applicable volume commitment. Verizon also permits its customers to switch from DS1 and DS3 services to higher-capacity services (including Ethernet) regardless of the number of circuits the customer wants to transition.[10] Thus, at least in Verizon's case there is no merit to tw telecom's claim that "ILEC Special Access Plans limit tw telecom's ability to upgrade DSn services to Ethernet services."[11]

tw telecom complains that Verizon offers circuit portability only in connection with plans that require a volume commitment, not term-only plans.[12] This is yet another example of parties seeking discounts without being willing to make the type of commitment that makes these discounts possible. As Verizon has explained, the added efficiencies associated with a customer making a volume commitment on top of a term commitment – in terms of greater certainty and predictability – are what make it possible for Verizon to offer additional benefits such as circuit portability.[13] When customers commit to a certain volume on top of a term Verizon can more

---

new multi-mode network, which will combine the CDMA, IDEN and WiMax networks it uses today.").

[8] *See* Verizon Mar. 27, 2012 Ex Parte; Topper Decl. ¶¶ 62-70.

[9] *See, e.g.*, Verizon June 6 Ex Parte at 3-4, 7; Verizon Apr. 26 Ex Parte; Verizon Mar. 27 Ex Parte; Verizon Sept. 6, 2011 Ex Parte; Verizon July 14, 2011 Ex Parte at 2 & Exhibit A; Verizon Feb. 28, 2011 Ex Parte at 3; Verizon Aug. 16, 2010 Ex Parte at 4-6 & Attachment A.

[10] *See* Verizon Telephone Companies, Tariff FCC No. 1, Section 2.9.6; Verizon Telephone Companies, Tariff FCC No. 11, Section 2.10.5; Verizon Telephone Companies, Tariff FCC No. 14, Section 2.10.5; Verizon Telephone Companies, Tariff FCC No. 16, Section 2.9.4.

[11] tw telecom June 5 Ex Parte at 13.

[12] *Id.* at 5, 6-7 n.18.

[13] Verizon Mar. 27 Ex Parte at 7-8; Verizon June 6 Ex Parte at 3.

efficiently plan the amount of network capacity and other resources it will need over a long term. This, in turn, facilitates Verizon's ability to allow customers to move circuits from one location to another, because of the greater assurances that Verizon's network and resources will be sized to meet demand at different locations. Furthermore, tw telecom ignores that even under term-only plans customers have the option to replace circuits without paying termination liability. Verizon's term-only plans allow a customer to disconnect a circuit at one location without penalty if the customer replaces it with a circuit obtained at another location.[14]

tw telecom argues that "[w]hile large volume purchases may in some cases yield lower costs for a seller," those efficiencies cannot legitimately be claimed here because the effect of Verizon's plans is "to lock up customer demand and prevent the development of competition."[15] According to tw telecom, Verizon's plans base discounts on "a percentage of the customer's historic demand."[16] Level 3 makes similar claims.[17] These arguments mischaracterize how Verizon's plans operate.

When a customer's plan expires, the customer has many options, including migrating all of its circuits away from Verizon. If the customer decides to keep some or all of its circuits with Verizon, it may renew its existing plan or choose a different plan. For example, in the Verizon East territory (FCC Tariff No. 1 and FCC Tariff No. 11), which accounts for the vast majority of the special access Verizon provides, a customer that originally enrolled in a CDP volume-and-term plan may, at the end of that plan, enroll in a term-only plan that contains no volume commitment (and can receive comparable discounts as under the term-and-volume plans).[18] For example, **[BEGIN HIGHLY CONFIDENTIAL]**

[END HIGHLY CONFIDENTIAL] Thus, contrary to what Level 3 argues, although Verizon's term-only plans are particularly attractive for smaller purchases, they are by no means limited to such customers.

A customer in a volume-and-term plan may, at the end of the term, also choose to renew that plan, or enter into a different volume-and-term plan (*e.g.*, the NDP), but at a lower volume. Discounts are not inextricably linked to a customer's past purchases. Another option, for customers of Verizon's CDP plan, is to remain on the expiring plan for an extra two months when the term ends, during which the customer would continue to receive the same discounts

---

[14] *See*, *e.g.*, Verizon Telephone Companies, Tariff FCC No. 1, Sections 7.4.13(C) and 7.4.17(E)(4).

[15] tw telecom June 5 Ex Parte at 6-7.

[16] *Id.* at 7.

[17] Level 3 June 27 Ex Parte at 7.

[18] Similar term-only options also are available in the Verizon West territory. For example, Verizon offers a DS3 plan with a three-year term and no volume commitment. *See* Verizon Telephone Companies, Tariff FCC No. 14, Sections 5.6.11(A) and 5.7.12(A).

associated with the old plan.[19] The customer could manage migration during those two months and enroll the remaining circuits in a new plan. As a real-world example, **[BEGIN HIGHLY CONFIDENTIAL]**
[END HIGHLY CONFIDENTIAL]

tw telecom argues that shortfall liability may apply during these two months,[20] but the customer has the ability to avoid such liability simply by working with Verizon to manage the circuit transition.[21] Although Verizon requires special access customers to consolidate their special access purchases *from Verizon* under a single plan, this in no way constitutes a "lock-up requirement," as Level 3 argues.[22] Customers have the choice of which plan to enter, and can choose a different option at the end of the term, with the same, greater, or lower volume and term, with the discount calibrated accordingly. Moreover, when a customer renews, discounts are not based on the customer's past volume, but on the volume commitment going forward. In the case of the health club analogy that Level 3 seeks to distort, the 5-member family whose daughter goes off to college would still qualify for a family discount, but one applicable to a 4-member family rather than a 5-member family.[23]

tw telecom further argues that higher month-to-month rates and termination penalties prevent it from removing a significant number of circuits away from Verizon.[24] This argument ignores the full ranges of options that are available to a customer. For example, if after the expiration of an initial term on a term and volume plan a customer seeks to reduce its volumes from Verizon, it has the option of switching from a term-and-volume plan to a term-only plan at the discount applicable to that term.[25] This enables the customer to reduce its volumes without any significant penalties. Once the customer settles on the volumes it wishes to purchase from Verizon, it can re-convert to a term-and-volume plan and may be eligible for a time-in-service credit under the new term-and-volume plan.

2. Verizon's Term-Only Plans Offer Comparable Discounts and Also Offer Some Network Flexibility

Verizon offers term-only discount plans that provide substantial discounts in exchange for customers' commitments to lease specific circuits from Verizon for specific term lengths,

---

[19] *See, e.g.*, Verizon Telephone Companies, Tariff FCC No. 1, Section 25.1.8(C)(2).

[20] tw telecom June 5 Ex Parte at 10.

[21] *See, e.g.*, Verizon Telephone Companies, Tariff FCC No. 1, Section 25.1.7(A)(2).

[22] Level 3 June 27 Ex Parte at 7-8.

[23] *Id.* at 7.

[24] tw telecom June 5 Ex Parte at 10.

[25] *See, e.g.*, Verizon Telephone Companies, Tariff FCC No. 1, Section 25.1.8(C)(3).

ranging up to seven years.[26] These plans do not include a commitment to purchase a certain volume of service from Verizon, and are not linked to the customer's past purchase volumes. Because Verizon's term-only discount plans do not require a volume commitment, they are particularly attractive to customers who purchase smaller volumes of special access circuits from Verizon. Indeed, customers who purchase even only a single circuit from Verizon in a single location can receive substantial discounts under these plans. Customers can generally select the term length that best meets their needs and do not have to commit to long terms to obtain substantial discounts.

Several parties complain that term-only plans are not viable because they do not permit circuit portability.[27] As noted above, however, **[BEGIN HIGHLY CONFIDENTIAL]** **[END HIGHLY CONFIDENTIAL]**, which belies such concerns. Moreover, Verizon's term-only plans do offer customers flexibility in order to manage their networks. Under the Term Pricing Plans and Service Discount Plans that Verizon offers in its FCC Tariffs Nos. 1 and 11, customers can disconnect a circuit that is subject to a term-only plan and replace that circuit with another for the balance of the commitment period without incurring termination liability charges.[28] These options offer a level of portability for term-only customers, who of course may choose to purchase term-and-volume plans if they decide they need more portability.

Level 3 argues that competitive providers generally offer shorter terms than ILECs.[29] Although that may be the case, it is irrelevant. Given the wide number of variables involved, there is simply no way to make apples-to-apples comparisons between Verizon's and competitors' plans. The mere fact that Verizon offers longer terms (with correspondingly higher discounts) than some competitors does not prove that Verizon's plans are somehow unreasonable. To the contrary, Verizon's plans were structured in response to what customers have requested. And customers do not have to purchase a lengthy term plan in order to receive considerable discounts.

---

[26] *See*, *e.g.*, Verizon Apr. 26 Ex Parte; Verizon Mar. 27 Ex Parte; Verizon Sept. 6, 2011 Ex Parte; Verizon July 14, 2011 Ex Parte at 2 & Exhibit A; Verizon Aug. 16, 2010 Ex Parte at 2-4 & Attachment A.

[27] *See*, *e.g.*, tw telecom June 5 Ex Parte at 5.

[28] *See* Verizon Telephone Companies, Tariff FCC No. 1, Sections 7.4.13(C), 7.4.18(D); Verizon Telephone Companies, Tariff FCC No. 11, Section 7.4.10(C)(6).

[29] Level 3 June 8 Ex Parte at 11-12.

3. The Marketplace for High-Capacity Services Is Growing Rapidly While Demand for TDM-Based Special Access Declines

Verizon and others have provided substantial evidence that competition for special access is significant and growing, particularly using cable and fixed wireless technologies.[30] Parties seeking regulatory intervention predictably argue that the Commission should short-circuit the competitive analysis and take immediate steps to intervene in the special access marketplace. That is improper. Where the Commission is still evaluating the scope of competition, there is no basis for further regulatory intervention, much less the far-reaching relief that these parties seek.

Indeed, the very "evidence" to which these parties point proves that the record as it currently exists cannot possibly support regulatory intervention, and highlights the need for the Commission to collect meaningful data. For example, Level 3 provides examples of locations where both an ILEC and a competitor provide service to show that competitors offer DS1s and DS3s at lower prices.[31] Level 3 has not disclosed the locations, or the competitive provider at these locations, nor has it indicated how these prices were determined. This type of anecdotal and incomplete analysis does not provide a basis for regulatory action, but at most indicates that competitive alternatives do in fact exist at many locations.

Level 3 and tw telecom also assert that ILECs have "market power" in the provision of special access, but fail to provide reliable data that support such a finding.[32] For example, Level 3 relies on various studies performed between 2003 and 2008 to support its claims.[33] But four-plus years is an eternity in a dynamic marketplace like special access. As Verizon and other parties have demonstrated, for example, demand for traditional special access services such as DS1 and DS3 rapidly is giving way to demand for much higher-capacity Ethernet services that are subject to even more intense competition.[34] No party can seriously challenge that demand

---

[30] *See, e.g.*, Verizon May 2 Ex Parte, Attachment 1 at 8-10 & Attachment 3; Verizon June 6 Ex Parte at 6; Comments of Verizon and Verizon Wireless at 19-28, WC Docket No. 05-25 & RM-10593 (filed Jan. 19, 2010) ("Verizon Comments"); Declaration of Michael D. Topper Decl. ¶¶ 26-34, *attached as* Verizon Comments, Attachment A; Patrick Brogan & Evan Leo, *High-Capacity Services: Abundant, Affordable, and Evolving* (July 2009), *attached to* Letter from Glenn T. Reynolds, USTelecom, to Marlene Dortch, FCC, WC Docket No. 05-25 & GN Docket No. 09-51 (July 16, 2009). *See also* Letter from Christopher Heimann, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 05-25 & RM-10593, at 3 (Dec. 23, 2011) (Response, D.1-5: "[I]n the 16 LSAs listed in the Commission's data request that reside outside of AT&T's service territory, AT&T purchases such services from 173 different suppliers, including ILECs, CLECs, cable systems, fixed wireless providers and others.").

[31] Level 3 June 8 Ex Parte at 3-7 & Exhibit A.

[32] tw telecom June 5 Ex Parte at 6; Level 3 June 8 Ex Parte at 16-25.

[33] Level 3 June 8 Ex Parte at 19-25.

[34] *See* Verizon June 6 Ex Parte at 5-6.

has been rising rapidly, and that new forms of competitors (such as cable and fixed wireless) have emerged to satisfy that demand. And while some parties argue that these dynamic conditions have affected only the provision of special access to wireless carriers, that is not true, and in any case misses the point. Even where cable and fixed wireless providers first entered the marketplace with a focus on wireless backhaul, they have since extended their facilities to serve other types of customers, including smaller businesses.[35]

Ad Hoc disputes that the special access marketplace is dynamic, but its sole evidence in support is a random collection of undated and unsourced quotes from unnamed "Ad Hoc Members."[36] This is no substitute for reliable evidence, and in any case is irrelevant on their face. These quotes merely indicate that there is still some demand for lower-capacity TDM-based special access, which is not in dispute. The point is that such demand is declining while demand for higher-capacity and Ethernet and IP-based services are growing rapidly, and these new services create new competitive opportunities and conditions that redound to the entire special access marketplace.

tw telecom also argues that the amount that it and other carriers choose to purchase from Verizon and other ILECs is proof of the absence of competition.[37] This flawed logic also cannot substitute for fact gathering. As an initial matter, tw telecom's analysis completely ignores its own self-supply, which is undoubtedly significant given the vast competitive facilities it operates. Moreover, there are a wide variety of legitimate business reasons why tw telecom and others may choose ILEC suppliers, even where competitive alternatives are available.

---

[35] *Q3 2011 Cablevision Systems Corp Earnings Conference Call – Final*, FD (Fair Disclosure) Wire, Transcript 102811a4214286.786 (Oct. 28, 2011) (Cablevision COO Tom Rutledge: "Well, Thomson Street Events, *CVC - Q3 2011 Cablevision Systems Corp Earnings Conference Call*, Final Transcript (Oct. 28, 2011) (Cablevision COO Tom Rutledge: "Well, our current advertising is that more people choose us than Verizon for their business services. So we think we have the majority of the share now in the small business marketplace. And we see continued share opportunities, particularly as we move up market into the midmarket, and there are still major portions of the midmarket available to us in terms of share growth."); *Cable Providers Push into Middle Market and Enterprise Sectors*, Communications Daily (Jan. 3, 2012) ("Cox Business is now pursuing 'large locals' in its franchise areas to boost its commercial service revenue. . . . Cox, which became the first cable operator to reach $1 billion in annual commercial service revenue, is shooting to hit $2 billion by 2016.") (citing Cox Business Senior Vice President Phil Meeks).

[36] Ad Hoc June 15 Ex Parte at 3-5.

[37] tw telecom June 5 Ex Parte at 14.

Sincerely,

Evan Leo /mkw

Evan T. Leo
Counsel for Verizon

cc: Deena Shetler (redacted version)
Nick Alexander (redacted version)
Eric Ralph (redacted version)
Betsy McIntyre (redacted version)
Margaret Dailey (redacted version)
Andrew Mulitz (highly confidential version)