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May 16, 2014

Ex Parte

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

Re: Technology Transitions, GN Docket No. 13-5

Dear Ms. Dortch:

Chairman Wheeler recently declared his intention to establish a “managerial framework that will chart the process by which the Commission will decide the large-scale legal, regulatory and policy issues arising from the IP transitions.”¹ In response, COMPTTEL presented a detailed proposal for such a framework.² COMPTTEL’s proposal emphasizes that competitive providers have been driving the IP transition forward, offering new, innovative service, delivering better services for lower cost and spurring the deployment of the robust communications services critical to the success of the Nation’s information economy. Yet as COMPTTEL notes, those achievements, critical as they have been, are at risk if the Commission fails to update its competition policies. Appropriately, COMPTTEL’s framework addresses that urgent need, focusing on (i) updating Commission rules to protect access to incumbents’ last-mile facilities, including prohibiting incumbents from imposing anticompetitive lock-up terms on special access facilities; (ii) confirming that the Act requires incumbents to provide IP interconnection for the exchange of voice traffic; and (iii) updating the Commission’s copper loop retirement rules.

Level 3 Communications, LLC (“Level 3”) supports COMPTTEL’s proposed framework, which provides the Commission with an achievable set of steps, and a realistic timeframe, for addressing these key policy issues. Indeed, some might argue that the timeframes set forth in the COMPTTEL framework could be more ambitious. For example, the Commission could readily issue an order clarifying that incumbent LECs have the duty to provide IP interconnection for the

¹ Technology Transitions, GN Docket No. 13-5, et al., Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 1433, 1537 (2014) (Statement of Chairman Wheeler).

² See Letter from Angie Kronenberg, COMPTTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-5, et al. (filed Apr. 2, 2014) (COMPTTEL Framework).

exchange of voice service under section 251 of the Act by August 2014, if not sooner, yet the COMPTTEL Framework recommends that the Commission issue such an order “[a]s soon as possible and no later than the end of 2014.”³ COMPTTEL’s reasonable, modest approach offers “no-excuse” deadlines that the Commission should have no trouble meeting—or beating.

Level 3 also joins Sprint in supporting Windstream’s position on the managerial framework.⁴ As Windstream puts it, nothing about the transition to IP networks “alter[s] the fundamental economics of last-mile deployment” which the Commission has analyzed extensively in many decisions over more than the last decade.⁵ Windstream is exactly right. And, as Windstream urges, the Commission should ensure that as the IP transition proceeds, wholesale customers continue to have access to last-mile facilities on reasonable terms—whether IP or TDM. In addition, wholesale customers should not be required to bear unreasonable special construction charges or to incur penalties associated with lock-up or long-term contracts as they begin to purchase more and more IP-based services in place of the TDM services they previously purchased.

There is one additional proceeding that also merits prompt resolution. Specifically, the Wireline Competition Bureau should, as Level 3 has previously urged, promptly issue a declaratory ruling clarifying that CLECs may collect end office switching access charges for over-the-top VoIP calls when providing the functional equivalent of end office switching but not a physical loop.⁶ As Level 3 and others have explained, disputes regarding the ability of CLECs to collect these charges have resulted in a competitive disadvantage for CLECs that have invested in modern IP networks, directly contrary to the Commission’s stated goal promoting investment in and deployment of such networks, and hindering the IP transition.⁷

³ See COMPTTEL Framework at 11.

⁴ See Letter from Eric Einhorn, Windstream Communications, Inc., et al., to Jonathan Sallet, General Counsel, and Julie Veach, Chief, Wireline Bureau, FCC, GN Docket No. 13-5, et al. (filed Apr. 28, 2014) (Windstream Ex Parte); Letter from Charles W. McKee, Sprint Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, et al., (filed May 9, 2014).

⁵ Windstream Ex Parte at 9.

⁶ See Letter from John T. Nakahata, counsel to Level 3 Communications, LLC, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Aug. 8, 2013).

⁷ See *id.* at 2-3; see also Letter from Brita D. Strandberg, counsel to Vonage Holdings Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Feb. 12, 2014).

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These issues are not new; many have been pending for years. The Commission deserves credit for recognizing the importance of resolving them to advance the IP transition, and for committing to resolve them in timely manner. Level 3 looks forward to working with the Commission and other stakeholders in that endeavor.

Please contact me if you have any questions.

Sincerely,

/s/ Joseph C. Cavender

Joseph C. Cavender

cc: Priscilla Delgado Argeris
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