

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

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Level 3 Communications, LLC	)	D.T.E. 07-XX
Revisions to M.D.T.E. Tariff No. 5	)	
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**PETITION FOR SUSPENSION OF TARIFF**

Pursuant to M.G.L. Chapter 159, §20, and 220 CMR §1.04(1)(d), Verizon New England Inc., d/b/a Verizon Massachusetts, MCImetro Access Transmission Services LLC, MCI Communications Services, Inc., and MCI Network Services, Inc. (collectively, “Verizon”) hereby object to, and petition the Department to suspend and investigate the switched access rate increase proposed by Level 3 Communications, LLC (“Level 3”) in its March 29, 2007 tariff filing.<sup>1</sup>

Through its tariff filing, Level 3 seeks to increase its rate for local end office switching from \$0.002124 per minute of use to \$0.042632. This change would force Verizon to pay Level 3 four cents a minute more for switched access than Verizon now pays under Level 3’s existing tariff. The effect is an increase of **1900%** (one thousand nine hundred percent) above the current rate.

The Department must reject this exorbitant and unjustified increase. A rate hike of this magnitude is not a mere “revision,” as Level 3 asserted in its transmittal letter. A price increase of this enormity is not just and reasonable, as required by M.G.L. Chapter 159, § 14. In its filing, Level 3 provided no explanation or justification for this dramatic

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<sup>1</sup> Level 3 filed its tariff changes with the Department of Telecommunications and Energy. Its filing was made prior to the establishment of the Department of Telecommunications and Cable, which now has authority over this matter.

increase in its switched access rates. It thus failed to demonstrate that the large price hike “is necessary to obtain a reasonable compensation for the service rendered,” as contemplated by M.G.L. chapter 159, § 20. Verizon and all other carriers that deliver interexchange calls to Level 3 for termination to its customers have no choice but to pay Level 3’s access rates because they must handle and deliver interexchange calls made to Level 3’s customers. In these circumstances, regulatory intervention is warranted.<sup>2</sup>

There is no justification for allowing Level 3 to recover even more of its network costs from other carriers, through higher access charges, rather than from its own end users. As the FCC has observed, economically efficient competition and the consumer benefits it yields cannot be achieved as long as carriers seek to recover disproportionately more of their costs from other carriers, rather than from their own end users.<sup>3</sup> Such distorted access rate structures “lead to inefficient and undesirable economic behavior,” *CALLS Order*, ¶ 129, including suppression of demand for the services of other carriers that must bear the costs and reduced incentives for local entry by firms that might be able to provide service more efficiently than the exchange carrier that is imposing excessive access fees. *Id.* ¶ 114.

The instant Massachusetts tariff filing is part of a concerted effort by Level 3 to raise its intrastate switched access rates in many states. Notably, Public Service

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<sup>2</sup> Level 3 did not provide Verizon any notice of its planned rate changes, so Verizon assumes that other affected carriers may be unaware of Level 3’s tariff revisions.

<sup>3</sup> See generally *Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report & Order in CC Docket No. 96-45, and Report & Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) (“*MAG Order*”); *Access Charge Reform*; *Price Cap Performance Review for Local Exchange Carriers*; *Low-Volume Long Distance Users*; *Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (May 31, 2000) (“*CALLS Order*”).

Commissions in Mississippi and West Virginia already have suspended Level 3's proposed switched access rate increases in those jurisdictions.<sup>4</sup> In ordering the suspension, the West Virginia Commission acted on the recommendation of its staff, which observed that "due to the fact that connecting carriers have no choice regarding connecting to Level 3 for the purposes of completing calls to its customers, and thus must pay the subject rate in those instances, this becomes a de facto monopoly situation."<sup>5</sup>

The proposed increase would greatly impact Verizon and every other carrier that purchases switched access service from Level 3. The cumulative impact to Verizon alone would be significant. Each of the Verizon companies identified above is a carrier that will be subject to the substantial switched access charge increases that Level 3 seeks to impose in Massachusetts beginning May 1, 2007. Accordingly, Verizon is substantially and specifically affected by the significant rate increases that Level 3 seeks to implement.

The Department should join the Mississippi and West Virginia commissions and suspend Level 3's tariff filing. M.G.L. C. 159, § 20, places the burden of proof on Level 3 to demonstrate that the proposed 20-fold increase in access rates is "necessary to obtain a reasonable compensation for the service rendered...." Level 3 should be required to satisfy this burden before any increase takes effect. Otherwise, if the Department later rejects the filing or requires a different rate than that proposed by Level 3 (either of which appears likely in light of magnitude of the increase), all affected carriers would have to go through the inconvenience and administrative expense of tracking, calculating and

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<sup>4</sup> *Level 3 Communications, LLC, Notice of Tariff Filing Which Proposes To Make Certain Changes To Switched Access Rate*, Public Service Commission of Mississippi, Suspension Order (April 20, 2007); *Level 3 Communications, LLC, Tariff filing to update rates for switched access services*, Public Service Commission of West Virginia, Case No. 07-0566-T-T, Commission Suspension Order (April 19, 2007).

<sup>5</sup> Case No. 07-0566-T-T, *supra*, Public Service Commission of West Virginia Utilities Division, Further Recommendation (April 16, 2007).

making true-up payments. Level 3, and not the affected carriers, should bear the risk that it will prove unable to demonstrate the reasonableness of its proposed access rate increase.

WHEREFORE, Verizon respectfully petitions the Department to suspend and investigate Level 3's proposed tariff and, upon thorough investigation, deny the rate increase requested.

Respectfully submitted,

VERIZON NEW ENGLAND INC.,  
MCIMETRO ACCESS TRANSMISSION  
SERVICES LLC, MCI COMMUNICATIONS  
SERVICES, INC., and MCI NETWORK  
SERVICES, INC.

By their attorneys,

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