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2007 APR 23 1:42:55

TRA. L. 0007-0001 **Melvin J. Malone**

Direct Dial (615) 744-8572
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April 23, 2007

Honorable Sara Kyle, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

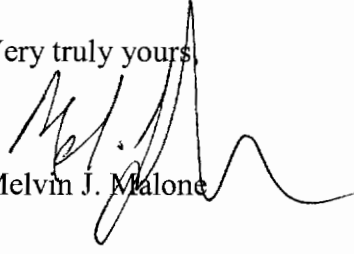
**RE: In the Matter of: Level 3 Communications, LLC's Tariff Filing to
Revise T.R.A. Tariff No. 20070122, TRA Docket No. 07-00098**

Dear Chairman Kyle:

Enclosed please find the original and thirteen (13) copies of the replacement transmittal letter for the previous transmittal letter regarding the *Complaint and Petition for Leave to Intervene of Verizon*, which was filed on Friday, April 20, 2007. An additional copy of this filing is enclosed to be "File Stamped" for our records.

If you have any questions or require additional information, please let me know.

Very truly yours,


Melvin J. Malone

cc: Parties of Record



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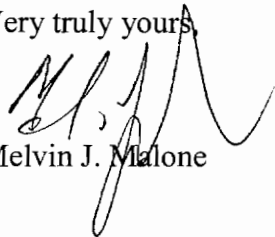
**RE: In the Matter of: Level 3 Communications, LLC's Tariff Filing to
Revise T.R.A. Tariff No. 20070122**

Dear Chairman Kyle:

Enclosed please find the original and thirteen (13) copies of the *Complaint and Petition for Leave to Intervene of Verizon* for filing in the above-captioned matter. Also enclosed is a check for the required filing fee. An additional copy of this filing is enclosed to be "File Stamped" for our records.

If you have any questions or require additional information, please let me know.

Very truly yours,


Melvin J. Malone

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April 20, 2007

filed electronically in docket office on 04/20/07

Honorable Sara Kyle, Chairman
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

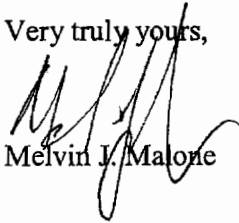
**RE: In the Matter of: Level 3 Communications, LLC's Tariff Filing to
Revise T.R.A. Tariff No.**

Dear Chairman Kyle:

Enclosed please find the original and thirteen (13) copies of the *Complaint and Petition for Leave to Intervene of Verizon* for filing in the above-captioned matter. Also enclosed is a check for the required filing fee. An additional copy of this filing is enclosed to be "File Stamped" for our records.

If you have any questions or require additional information, please let me know.

Very truly yours,


Melvin J. Malone

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
LEVEL 3 COMMUNICATIONS, LLC's)	DOCKET NO.
TARIFF FILING TO REVISE T.R.A.)	
TARIFF NO. 3)	

COMPLAINT AND PETITION FOR LEAVE TO INTERVENE OF VERIZON

The Verizon companies¹ authorized to provide telecommunications service in Tennessee, by and through their undersigned counsel, hereby file this Complaint and Petition to Intervene in the above-captioned proceeding pursuant to Tennessee Regulatory Authority ("TRA" or "Authority") Rules 1220-1-2-.02 and 1220-1-2-.08 and Tenn. Code Ann. §§ 65-4-104, 65-4-117 and 4-5-310. In support of this complaint and petition, Petitioners aver as follows:

1. Verizon Access is certificated by the Authority as a competitive local exchange carrier ("CLECs"). Bell Atlantic, NYNEX, MCI and VSSI are certificated by the Authority as interexchange carriers.

2. Level 3 Communications, LLC ("Level 3"), a Delaware limited liability company, is a CLEC certificated by the Authority to provide facilities-based and resold local exchange and interexchange telecommunications service on a statewide basis in the State of Tennessee. According to Authority records, Level 3 maintains its principal offices at 1025 Eldorado Boulevard, Broomfield, CO 80021.

¹ These companies include MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services ("Verizon Access"), MCI Communications Services, Inc. ("MCI"), Bell Atlantic Communications, LLC ("Bell Atlantic"), NYNEX Long Distance Company ("NYNEX"), and Verizon Select Services, Inc. ("VSSI") (collectively "Verizon" or "Petitioners").

3. All of the Petitioners are directly impacted by Level 3's proposed rate increase.

4. Interexchange carriers use the networks of local exchange carriers, such as Level 3, to access the local exchange carrier's customers. A long-distance call typically originates on one local exchange carrier's network, passes through an interexchange carrier's network, and then terminates on a local exchange carrier's network. The compensation the interexchange carrier pays to the local exchange carrier that originates the call is usually called originating access. The compensation the interexchange carrier pays to the local exchange carrier that terminates the call is usually called terminating access.

5. On or about March 30, 2007, Level 3 filed "Revisions to Level 3 Communications, LLC T.R.A. Tariff No. 3" (the "*Tariff Amendment*") with the Authority, which contained substantial increases to its switched access rates. Specifically, Level 3 proposes to raise its local end office switching rate from \$0.002128 to \$0.060447; this would force Petitioners to pay nearly 6 cents more for a minute for switched access than they pay under Level 3's existing tariff. If permitted to become effective as filed, the *Tariff Amendment* would, therefore, result in a rate increase of over **2800 percent** for both originating and terminating switched access.²

6. If the *Tariff Amendment* is approved, Petitioners, and all other similarly situated carriers will have no choice but to pay Level 3's exorbitant access rates when they handle interexchange calls originating from Level 3 customers and when they deliver interexchange calls to Level 3 for termination to its customers. For example, when a Verizon Access customer calls a Level 3 customer, Verizon Access cannot refuse to deliver that call to Level 3 (and thus

² Notably, Level 3 did not provide Petitioners notice of its proposed rate changes. Hence, Petitioners assume that other affected carriers may be unaware of Level 3's proposed *Tariff Amendment*. See Authority Rule 1220-4-8-.07(2)(b) (requiring 30-day notice to "affected customers" for price increases). If proper notice was not given, that too would be a violation of the Authority's rules.

cannot avoid Level 3's terminating access charges). The enormity of the planned rate hike shows that the marketplace has not and will not tame Level 3's switched access rates.

7. Level 3's *Tariff Amendment* does not provide a reason for its substantial proposed access rate increase. It merely asserts that the proposed revisions "update rates for switched access services."³ The only possible reason for Level 3's proposed increase is to implement a business plan that depends more on generating revenues from interconnecting carriers than from Level 3's own end users. This practice constitutes anticompetitive behavior.

8. Indeed, the Federal Communications Commission ("FCC") has observed that 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—as Level 3 seeks to do here.⁴ Such distorted access rate structures "lead to inefficient and undesirable economic behavior,"⁵ including the suppression of demand for the services of other carriers that must bear the burden of such unreasonable structures and reduced incentives for local entry by providers that might be able to offer more choices to consumers and to provide service more efficiently than resident carriers.⁶ In other words, unduly high access rates discourage competition in both local and long-distance markets.

9. The proposed *Tariff Amendment* represents the type of distorted and unreasonable access rate structure criticized by the FCC as anticompetitive. Consistent with the FCC's long-

³ *Tariff transmittal letter from K.M. Hyde, Level 3 Legal Dept., to S. Dillon, TRA Docket Manager* (March 29, 2007).

⁴ 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*").

⁵ *CALLS Order*, ¶ 129.

⁶ *Id.* ¶ 114.

recognized position, the West Virginia Public Service Commission Staff recently recommended suspension of Level 3's proposed switched access rate increases in that state. More Specifically, West Virginia Commission Staff observed as follows:

[D]ue 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.

Accepting Staff's recommendation, on April 19, 2007, the West Virginia Public Service Commission suspended Level 3's proposed rate increase, which was scheduled to become effective on May 1, 2007.⁸

10. At a minimum, this exorbitant rate increase is anticompetitive, anti-consumer, unreasonable and unjustified.

11. The proposed rate increase violates Level 3's Authority-mandated obligation to provide interconnection, including switched access,⁹ to other carriers "under reasonable terms and conditions."¹⁰ On its face, an unexplained twenty-eight fold increase in rates other carriers have no choice but to pay is not reasonable.

12. Tenn. Code Ann. § 65-4-124(a) provides, in part, that "All telecommunications services providers shall provide non-discriminatory interconnection to their public networks under reasonable terms and conditions[.]" (emphasis added). The proposed rate increase is not reasonable and therefore violates this statute.

13. Tenn. Code Ann. § 65-4-121 provides, in part, that "the regulation of telecommunications services and telecommunications services providers shall protect the

⁷ *Level 3 Communications, LLC, Tariff Filing to Update Rates for Switched Access Services*, West Virginia Public Service Commission, Case No. 07-0566-T-T (April 16, 2007).

⁸ Commission Suspension Order, *Level 3 Communications, LLC, Tariff Filing to Update Rates for Switched Access Services*, West Virginia Public Service Commission, Case No. 07-0566-T-T, p. 1 (April 19, 2007).

⁹ See Authority Rule 1220-4-8-.01(1)(k).

¹⁰ Authority Rule 1220-4-8-.04(3)(c)(2).

interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider[.]” Because Level 3 is seeking to recover an unreasonably disproportionate amount of its costs from other carriers, as opposed to its own end user customers, the proposed rate increase violates this statute’s prohibition against unreasonable prejudices and disadvantages.

14. Tenn. Code Ann. § 65-4-122(b) provides that a common carrier or public service company that charges “more than a just and reasonable rate of toll or compensation for service in this state commits extortion, which is prohibited and declared unlawful.” The proposed rate increase, which is more than a just and reasonable rate, violates this statute.

15. Tenn. Code Ann. § 65-4-122(c) provides that it shall be unlawful for a common carrier or public service company “to subject any particular . . . company . . . , or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.” Because Level 3 is seeking to recover an unreasonably disproportionate amount of its costs from other carriers, as opposed to its own end user customers, the proposed rate increase violates this statute.

16. Tenn. Code Ann. § 65-4-115 provides, in part, that “No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory[.]” The proposed rate increase, which is unjust and unreasonable, violates this statute.

17. Pursuant to Tenn. Code Ann. § 65-5-101(a) and the allegations set forth herein, the proposed rate increase is unjust, unreasonable and excessive.¹¹

18. Tenn. Code Ann. § 65-5-104(a)(1) provides that “No public utility shall make, impose, or exact any unreasonable . . . charge . . . for any product, or service supplied or

¹¹ See also Tenn. Code Ann. § 65-5-103.

rendered by it within this state[.]” The proposed rate increase, which is unreasonable, violates this statute.

19. For the reasons set forth herein, the TRA should reject Level 3’s unlawful proposed access rate increase.

20. The Petitioners’ requests are consistent with the public interest. The proposed rate increase is against the public interest and thus harmful to Tennessee’s consumers.

21. If permitted to become effective, proposed Revisions to Level 3 Communications, LLC T.R.A. Tariff No. 3 will directly and adversely affect Petitioners’ operations in the State of Tennessee.

22. Petitioners’ legal rights, duties, privileges, immunities or other legal interests will be determined in this proceeding.

23. Because of their direct interest in this proceeding, Petitioners respectfully seek full intervention rights, the convening of a contested case, and suspension of the *Tariff Amendment* until the conclusion of a contested case.

24. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing Petitioners’ requests.

25. Should the requests be granted, all notices, pleadings, orders, documents and the like in this proceeding should be provided to:

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1200 One Nashville Place
Nashville, Tennessee 37219-2433
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Dulaney L. O’Roark III
Verizon Communications, Inc.
Six Concourse Parkway, Suite 600
Atlanta, GA 30328
Tel. (770) 284-5498
Fax (770) 284-5488
de.oroark@verizon.com

WHEREFORE, Petitioners pray that the Authority grants the following:

1. Consistent with the public interest, Petitioners urge the Authority to summarily deny and reject proposed Revisions to Level 3 Communications, LLC T.R.A. Tariff No. 3;
2. In the event the Authority does not summarily reject the proposed Revisions to Level 3 Communications, LLC T.R.A. Tariff No. 3, Petitioners request that the Authority (a) suspend the proposed Revisions to Level 3 Communications, LLC T.R.A. Tariff No. 3 on or before April 30, 2007, and decline to permit the same to become effective on May 1, 2007; (b) convene a contested case regarding the matters set forth in this complaint and suspend the proposed Revisions to Level 3 Communications, LLC T.R.A. Tariff No. 3 until the completion of said contested case; (c) grant this petition for full intervention; (d) appoint a Hearing Officer to prepare this matter for a hearing on the merits; and (e) issue a final ruling rejecting the proposed Revisions to Level 3 Communications, LLC T.R.A. Tariff No. 3.
3. At a minimum, and in the alternative, Petitioners ask the Authority to suspend the proposed Revisions to Level 3 Communications, LLC T.R.A. Tariff No. 3 on or before April 30, 2007, and proceed with an investigation in which all interested parties, including Petitioners, are allowed to participate in all respects; and
4. All other relief deemed appropriate under the law and the rules and regulations of the Authority.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mel, J. Malone', written over a horizontal line.

Melvin J. Malone
MILLER & MARTIN PLLC
150 Fourth Avenue North
1200 First Union Tower
Nashville, TN 37219-2433
(615) 244-9270

Attorneys for Petitioners

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Atlanta, GA 30328
Tel. (770) 284-5498
Fax (770) 284-5488

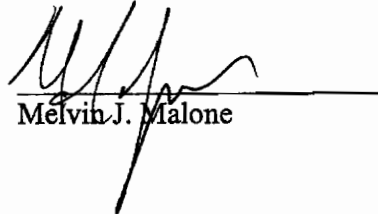
Counsel for Verizon Communications, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2007, a true and correct copy of the foregoing has been served on the party set forth below, via Express Mail:

Thomas C. Stortz, Group Vice President & General Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021



Melvin J. Malone