Level(3)
COMMUNICATIONS

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The Honorable Christine A. Varney
Assistant Attorney General for the Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Chairman Julius Genachowski
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Comcast and NBC Universal

Dear Assistant Attorney General Varney, Chairman Genachowski and Commissioners:

Comcast's recent decision to charge for the delivery of content to Comcast which has been requested by Comcast's subscribers clearly has important competitive and public policy implications. Consequently, I write to ask that you impose appropriate conditions on Comcast's pending acquisition of NBC Universal that will assure that American consumers continue to have unfettered access to all forms of content available on the Internet.

While Comcast has attempted to portray Level 3's disagreement with the charges that Comcast wants to impose as merely an "old fashioned peering dispute" or merely a "commercial disagreement," it is clear to us that much broader policy implications are at stake, significantly impacting competition in the delivery of all video programming and the future of the Internet.

Fundamentally, the question is whether a residential broadband Internet service provider like Comcast can charge a fee (determined unilaterally by Comcast) for interconnection to its network to enable delivery of content requested by Comcast's subscribers. Comcast says the answer is yes. We believe that answering the question as Comcast proposes fundamentally and adversely changes the nature of the Internet, the predictability of costs that content and applications providers must consider when developing new products, the pace of innovation within the Internet, the competitive market for independent content and applications and the backbone transport services that enable them.

The question, quite simply, is whether Comcast and other residential broadband Internet service providers should be allowed to use their dominant control over access to their subscribers' eyes and ears in order to coerce payments from broadband backbone and independent content providers.

In contrast with certain past Internet interconnection disputes between backbone Internet companies, Comcast and other last-mile providers enjoy a unique position within the Internet – access to their subscribers *must* be achieved through direct or indirect interconnection with Comcast. There is simply no other way to deliver to Comcast's subscribers the content that they request. Absent governmental restrictions, Comcast and other residential broadband Internet service providers have the power to leverage their relationships with broadband consumers to act in an anticompetitive manner. Comcast has Internet access dominance because no other company (with the possible exception of another residential broadband Internet service provider) can directly provide high-speed Internet transmission to Comcast's subscribers. Comcast's unique position gives it substantial leverage to impose anticompetitive prices and conditions with respect to Level 3 and any other Internet backbone provider or content provider.

If Comcast maintains its position, fundamental expectations and market positions in the Internet will be forever changed. If successful, Comcast will be the first – but clearly not the last – residential broadband Internet service provider in the U.S. to demand an access charge from backbone networks that deliver the content that Comcast's subscribers have paid Comcast to see, hear and use.

As the New America Foundation noted in its December 8 letter to you, this disagreement is not just a commercial dispute between two parties because it "raises particular questions about whether last-mile providers can leverage their market power to harm their competitors in the market for Internet content."

Fair and equitable interconnection is the lifeblood of the Internet. In the Internet backbone, competition assures fairness and equity, as backbone carriers typically have multiple suppliers for transport services and settlement-free (unpaid) or settlement-based (paid or partially paid) interconnection. At the last mile, however, there is little or, in most places, no competition to discipline interconnection pricing, contract terms or architecture demands that Comcast or other residential broadband Internet service providers might make. Without any meaningful competition or options to bypass Comcast, Comcast is free to set terms on a "take it or leave it basis" – which is exactly what Comcast did with Level 3 a few weeks ago.

Although we have tried to resolve matters amicably with Comcast by offering to deliver the content as close to its subscribers as is technically feasible at no cost to Comcast, it is apparent to us that no resolution is possible because, fundamentally, Comcast wants to charge for delivery of content to its subscribers, regardless of any network engineering concessions we offer.

While this disagreement with Comcast clearly has broad Internet implications, the FCC and the Department of Justice have a unique and timely opportunity to compel Comcast to act fairly and equitably through the NBC Universal transaction, and to send a clear message to all other residential broadband Internet service providers that unreasonable and discriminatory interconnection terms cannot be used as a tool to impede competition or foreclose subscriber choices in the Internet.

Therefore, we ask that you consider imposing the following condition on Comcast:

> *For a period of 5 years following the closing of the acquisition between Comcast and NBC Universal:*
>
> - *Comcast must interconnect with requesting Internet backbone carriers on nondiscriminatory, fair and reasonable terms and in any event no less advantageous than the terms effectively provided to its affiliates;*

- *The location and technical configuration of interconnection points for the exchange of traffic between Comcast and requesting Internet backbone carriers must be technically, operationally and economically nondiscriminatory, fair and reasonable and in any event no less advantageous than the terms effectively provided to its affiliates;*
- *Comcast may not utilize its dominant control over access to its subscribers in order to unfairly charge Internet backbone carriers for interconnection to its network;*
- *Comcast will interconnect, on a settlement free basis, with requesting Internet backbone companies meeting such nondiscriminatory, fair and reasonable requirement as Comcast may choose to specify, which may include the number of announced routes, the extent of customer interaction between the networks (i.e., the "community of interest" that exists between the customers of each network), the scale and scope of the networks, and customer requirements of each network.*

We also ask that the Commission consider broadly applying similar requirements on other broadband Internet access providers. Without any oversight by regulators, residential broadband Internet service providers will undoubtedly follow Comcast's example and use their dominant market position in interconnection to stifle competition and innovation within the Internet.

Sincerely,

James Q. Crowe
Chief Executive Officer
Level 3 Communications, Inc.