



# PUBLIC NOTICE

**Federal Communications Commission**  
**445 12<sup>th</sup> St., S.W.**  
**Washington, D.C. 20554**

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**DA 09-1878**  
**Released: August 25, 2009**

**WIRELINE COMPETITION BUREAU SEEKS COMMENT ON  
LEVEL 3 COMMUNICATIONS' PETITION FOR DECLARATORY RULING THAT  
CERTAIN RIGHT-OF-WAY RENTS IMPOSED BY THE NEW YORK STATE THRUWAY  
AUTHORITY ARE PREEMPTED UNDER SECTION 253**

**PLEADING CYCLE ESTABLISHED**

**WC Docket No. 09-153**

**Comment Date: September 24, 2009**  
**Reply Comment Date: October 15, 2009**

Level 3 Communications, LLC (Level 3) filed a petition with the Commission on July 23, 2009, asking the Commission to “preempt certain rent provisions that the New York State Thruway Authority (“NYSTA”) levies on Level 3 . . . for access to rights-of-way necessary to operate and connect to Level 3’s fiber-optic backbone network [along the Thruway].”<sup>1</sup> Level 3 asserts that these charges are “so exorbitant as to materially impair” Level 3’s ability to provide interstate or intrastate telecommunications service, and in many cases prevent Level 3 from providing such services altogether.<sup>2</sup> Level 3 adds that NYSTA’s charges preclude Level 3 from extending its fiber-optic IP (Internet Protocol) networks to telecommunications, cable and wireless companies serving many small and medium-sized communities along the New York State Thruway, thus impairing the provision of broadband and other telecommunications services to these communities in conflict with section 706 of the Telecommunications Act of 1996.<sup>3</sup>

Level 3 argues that the Commission must preempt the rent requirements pursuant to Section 253(d) of the Communications Act of 1934, as amended.<sup>4</sup> In particular, Level 3 contends that NYSTA’s charges violate section 253(a) because they have the effect of barring Level 3 from providing

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<sup>1</sup> Level 3 Petition for Declaratory Ruling that Certain Right-of-Way Rents Imposed by the New York State Thruway Authority Are Preempted Under Section 253, WC Docket No. 09-153, at 1 (filed July 23, 2009) (Level 3 Petition).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1-2. *See* 47 U.S.C. § 1302.

<sup>4</sup> Level 3 Petition at 27. *See* 47 U.S.C. § 253(d).

telecommunications services to communities along the Thruway,<sup>5</sup> and the exemptions from preemption contained in sections 253(b) and (c) do not apply.<sup>6</sup>

The Commission invites comment on the Level 3 Petition. Interested parties may file comments on or before **September 24, 2009** and reply comments on or before **October 15, 2009**. All pleadings should reference WC Docket No 09-153.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Suite TW-A325, Washington, D.C. 20554. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
  - ECFS filers must transmit one electronic copy of the comments for WC Docket No. 09-153. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message: get form <your e-mail address>. A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.

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<sup>5</sup> Level 3 Petition at 27.

<sup>6</sup> *Id.*

Parties should also send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to [CPDcopies@fcc.gov](mailto:CPDcopies@fcc.gov). Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They are also available through the Commission's Electronic Comment Filing System (ECFS) accessible on the Commission's web site, <http://www.fcc.gov/cgb/ecfs>. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com).

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), or (202) 418-0432 (TTY).

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, *et seq.* Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

For further information, contact Claudia Pabo, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1595.

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