

January 14, 2008

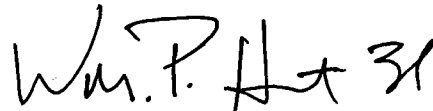
L.R. Wilson, Chair
Competition Policy Review Panel
280 Albert Street
Ottawa ON K1A 0H5

Dear Mr. Wilson:

Through the attached submission, Level 3 Communications, Inc. ("Level 3") is pleased to provide comments to the Competition Policy Review Panel in response to your invitation in the Consultation Paper issued by the Panel entitled, "Sharpening Canada's Competitive Edge" (October 30, 2007). We appreciate that the Panel invited comments to be submitted by January 11, 2008. Business travel by the undersigned and other Level 3 executives delayed our ability to complete the comments until today. We would be grateful if you would accept them with the benefit of this explanation.

Level 3 considers that the creation of the Competition Policy Review Panel is a very important exercise and that the responses to the questions of how Canada can best facilitate investment and enhance competitiveness in the new global economy will be pivotal to shaping the policy and legislative responses to the recommendations that will be made. We trust you will find the comments in the attached submission to be of assistance and we would be pleased to expand upon any of the matters that have been raised.

Sincerely,



William P. Hunt III
Vice-President, Public Policy

Attachment

WPH/mjr

Submission of Level 3 Communications Inc.

EXECUTIVE SUMMARY

Level 3 Communications, Inc. (“Level 3”) welcomes this opportunity to provide comments to the Competition Policy Review Panel that is reviewing the competition and investment laws in Canada. Level 3 is a premier international provider of Optical fiber based voice, data and video transport services. The Company’s services are purchased by the largest and fastest growing consumers of communications services in the World. Primarily a wholesale provider, Level 3’s customer base includes:

- 19 of the world’s top 20 telecom companies
- 9 of the 10 largest telecom carriers in Europe
- 9 of the top 10 U.S. Internet Service Providers (ISPs)
- 9 of the top 10 U.S. cable companies
- 4 of the top 5 telecom companies in Asia
- Top 5 U.S. Wireless Service Providers

Our high-capacity, nationwide backbone was recently overbuilt with new DWDM, IP and private-line switching layers. Level 3 technology deployments have enabled new, market-leading services like 10 GigE LAN PHY and 40 Gbps Wavelength services. The Company has forecast revenue of (US)\$4.2 Billion for 2007.

Through a series of corporate acquisitions starting in 2005, Level 3 has expanded its network to include more than 56,000 miles of long-haul capacity and an additional 26,000 miles of local networks in 125 cities in North America and Europe. The Level 3 network represents more than (US)\$27 Billion in capital investment in the latest communications technologies and represents a network that in less than 10 years has gone from the drawing board to carrying approximately one-third of the World’s internet

traffic. However, because of foreign ownership restrictions, the Level 3 network only includes a small portion that transits Canada from Toronto to Montreal. Located in Broomfield, Colorado, the Company employs approximately 7,000 people in North America and Europe. The Company has a small number of employees in Toronto.

It is appropriate for lawmakers and regulators to revisit the social and policy goals considered when establishing national policies such as limiting foreign ownership and investment. This is especially true when technologies and the marketplace have evolved in a manner that directly challenges the underpinnings of those policies. Level 3 believes that in today's world the maintenance of the foreign ownership restrictions in Canada is hurting its economy and its citizens. Simply stated in response to the Panel's question, Canada cannot be a world-leading destination for talent, capital and innovation as long as foreign ownership restrictions remain in place in such a vitally important industry as telecommunications.

WHEN THE PAST COLLIDES WITH THE PRESENT

When Canada adopted restrictions on foreign ownership for telecommunications companies, one of the stated goals was to “safeguard national sovereignty, and promote social and economic security.”¹ At that time two, decades ago, the telecommunications marketplace was very different than it is today. Then, countries were just starting to shake off the model of monopoly regulation for telecommunications providers and were experimenting with competition policies. More importantly, the existing telecommunications laws and policies were driven by the goals of providing universal access to all citizens while dealing with the costs and technological limitations of the

¹ Department of Communications, News Release, “Flora MacDonald Announces Telecommunications Policy for Canada” (22 July 1987).

copper switched network. The costs of the network were socialized across the country through various regulatory or taxation schemes including treating capacity as a scarcity, pricing services based on distance and length of time and building in explicit cross-subsidies to artificially lower prices in high cost service territories. Networks were centrally planned and large scale investment was slow as regulators had to consider and approve the deployment of new technologies or changes in the network in order to protect the captive ratepayers.

Today that world no longer exists. Today's market represents not regulation but a revolution in communications. Driven by technological advances and the compelling economics that follow, the monopolistic model has given way to a rich, competitive intramodal market that has permanently altered the market. The Canada Roundtable on the Future of the Internet Economy correctly recognized this fundamental shift when it stated: "In the Internet Economy, traditional legal and regulatory approaches are unlikely to be effective because of factors such as the speed of change, the borderless nature of cyberspace, the complexities of the interconnected world, and the attitudes of the 'Internet' generation toward issues such as privacy and intellectual property rights."²

Level 3 agrees with the Roundtable that "traditional and legal regulatory approaches" are not up to the task of advancing Canada's policy and economic interests in large part because they do not recognize the three fundamental trends that have developed in the communications marketplace. The first change has occurred in demand. Canadians, as well as end-users around the globe, now expect to access personal or business information whenever and wherever they want. And that growing demand has

² Chair's Report, Canada Roundtable on the Future of the Internet Economy, David Johnston, President, University of Waterloo (October 2, 2007).

made the price of bandwidth elastic. In the past seven years, the industry has seen a more than 90 percent drop in the price of bandwidth.

One reason for that incredible decline in pricing has been a fundamental change in the economics of operating networks as industry shifts from copper to fiber optics. With the lowest incremental costs, fiber optics represents the best technology to serve concentrated demand at fixed locations. As demand grows and the costs of equipment decline, fiber will move closer and closer to the end-user. Then it will be up to the network operators to manage this deployment correctly to capture the economies of scale that fiber optics can provide.

But the greatest implication for the industry and thus regulators is that the demand by end-users for communications services, devices and content shatter the model of a unified provider. Each of those categories now represents a separate market where providers are bundling and purchasing services to deliver their products to the end-users. One study noted that the number of Internet-connected devices worldwide will reach 5 billion by 2012. “As astounding as these numbers are, we have seen estimates of up to 15 billion Internet-attached devices today, and 10 trillion in the next 15 years.”³ With that many devices interconnected through the Internet and demanding access to information around the globe, network operators will need to manage their networks and invest in manner that allows them achieve scale and incremental margins. In the same study mentioned above, Nemertes predicts that network operators will have difficulty

³ “The Internet Singularity Delayed: Why Limits in Internet Capacity Will Stifle Innovation on the Web”, Produced by Nemertes Research, Fall 2007, p. 56. See www.nemertes.com.

meeting the demand for bandwidth and that carriers in North America will need to invest an additional (US) \$43 billion to meet that demand.⁴

THE MARKETPLACE TODAY

Since Level 3 does not meet the Canadian ownership and control provisions for a telecommunications carrier, it is not allowed to provide facilities based services in Canada. Instead, it must resell the facilities of other Canadian carriers. Resold facilities do not provide the type of economies of scale or superior economics that a provider can attain using its own facilities. The ownership restriction forces many Canadian carriers and content providers into higher cost, less efficient arrangements in order to reach the Level 3 and other non-Canadian networks. For example, Level 3 maintains and operates a gateway facility in downtown Toronto. This facility houses the electronics necessary to maintain the network. In all other countries where Level 3 operates, its customers can bring traffic into the Level 3 facility to be put directly on the Company's network. In many instances, Level 3 will build to the customer's premises to provide additional cost savings to the customer. For example, a large bank with offices in London and New York can receive end-to-end services on the Level 3 network. Yet that same bank cannot receive end-to-end services on the Level 3 network if it wishes to direct traffic from London to Toronto. The simple economic truth is that its costs will go up once it hits the Canadian border.

Faced with such restrictions, many customers do not exchange traffic with Level 3 at its Toronto Gateway and instead opt for less efficient, high cost border meet-points. For example, a Canadian entity originating traffic destined for the Internet may carry it over the facilities of a third party to a Level 3 interconnection point in Detroit or Buffalo.

⁴ Id at. p. 45.

The same could be true for traffic heading back into Canada. Level 3 may carry that traffic from Europe all the way to the border where it must then hand it off to a third party for termination or arrange for resold facilities within Canada. Such network arrangements are inefficient and more costly than if Level 3 could carry its traffic directly to its Toronto Gateway. In addition to its Toronto Gateway, Level 3 maintains physical sites in Hamilton, Peterborough, Tweed, Perth, Ottawa, Champlain and Montreal. Each of these sites resides on one of the largest and most efficient optical networks in the world yet is effectively cut-off from accessing the lower cost that Level 3 could offer.

The limitations on how Level 3's network is used, impact any number of providers in the Canadian communications marketplace. As discussed above, communications services, devices, applications and content are separating into different markets. Take for example a Canadian entity such as a content provider. That company may have a business model that delivers Canadian entertainment content around the world. In order to do that, they will need to either maintain their own servers or outsource to another entity. That party will need to obtain fiber optic transport since you can't economically deliver video content over copper networks. That provider will most likely establish a collocation facility at the site of its network operator in order to avoid the costs of transporting the content across town. Unless there is adequate competition from Canadian owned and controlled network providers, those entities could pay more and incur inefficient network architectures than if they could reach the Level 3 network in Canada. Also, the hosting company may decide – for reasons of economics – to place its servers outside of Canada in order to obtain better network economics. In that case,

Canada has lost investment and potential employment as those jobs get moved to other countries.

Communications businesses face the same issues when they structure their business models and because of the borderless nature of Internet services, they will align their businesses with those locations that can provide lower costs and more economic network arrangements. Maintaining foreign ownership restrictions in this environment will only accelerate the flight of capital and jobs away from countries that unnecessarily restrict network investment.

As a Panel, you have stated that your mandate is to review key elements of Canada's competition and investment policies to ensure that they are working effectively.⁵ It has also been stated that the fundamental task of the Panel's review is to provide recommendations to the Government on how to enhance Canadian productivity and competitiveness, as these are keys to generating wealth and creating jobs and opportunity in a fast-changing global economic environment. Level 3 is obviously not alone in being impeded by foreign ownership provisions from investing in and ultimately providing competitive services which will ultimately enhance Canadian productivity and competitiveness. Simply stated in response to the Panel's question, Canada cannot be a world-leading destination for talent, capital and innovation as long as foreign ownership restrictions remain in place in such a vitally important industry as telecommunications.

CONCLUSION

There is no dispute that the information revolution is here and that the genie cannot be put back in the bottle. Since we now live in an environment where companies must attract capital in the marketplace, and not as a regulated monopoly, those companies

⁵ "Sharpening Canada's Competitive Edge" (October 30, 2007), Introduction at p. 1.

must have the broadest access to capital in order to meet the growing demand for bandwidth services. Restrictions that limit access to that capital will result in minimal investment in new technologies and services which will result in consumers paying higher prices services for services. Capital will move to where it will generate the highest returns and nations that fail to adapt will see investment leave their countries and in some instances right across the border. The net result is lost investment in the country, fewer employment opportunities and a national communications infrastructure that cannot meet the demands of its citizens.

Level 3 urges Canada to lift its restrictions on foreign ownership on telecommunications companies. If the restrictions are lifted, then investment will come resulting in a more robust and competitive telecommunications sector which will enhance Canadian productivity and competitiveness.