Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition for Declaratory Ruling Regarding Access Charges by Certain Inserted CLECs for CMRS-Originated Toll-Free Calls	)	WC Docket Nos. 01-92, 96-262

Initial Reply Comments of Excel Telecommunications
On Level 3's Petition for Declaratory Ruling and
Motion for Extension of Time to File Final Reply Comments

Comtel Telcom Assets LP, d/b/a Excel Telecommunications ("Excel") respectfully submits these Initial Reply Comments in support of the Petition for Declaratory Ruling Regarding Access Charges by Certain Inserted CLECs for CMRS-Originated Toll-Free Calls filed by Level 3 on May 12, 2009 with the Federal Communications Commission ("FCC") in WC Dockets 01-92 and 96-262 ("Level 3 Petition"). Excel, which learned of the existence of this proceeding a few days ago, further moves pursuant to Section 1.46 of the Commission's Rules for an extension through June 15, 2009 of the due date for the filing of reply comments.

1. Excel is another victim of the same access charge scheme that Hypercube Telecom, LLC and its affiliates (collectively, "Hypercube") and apparently other inserting CLECS have perpetrated on Level 3. Contrary to Hypercube's Opposition to Level 3's Petition, the dispute is not just a "dispute between two co-carriers," but rather results from a single CLEC insertion scheme used by Hypercube against a number of interexchange carriers ("IXCs"), including Excel and Level 3. *See* Hypercube Comments in Opposition at 8 (May 22, 2009).

2. As Level 3 explains, Hypercube has inserted itself in between the originating wireless carriers and the incumbent local exchange carrier ("ILECs") in the calling path of 1-

8XX calls dialed by the subscribers of wireless carriers. Prior to Hypercube's insertion into the calling path, the wireless carriers routed 1-8XX calls dialed by their customers to ILECs, who then routed them to the interexchange carrier ("IXC"). Accordingly, Excel received one set of originating access invoices from the ILECs for their services in handling a portion of the calling path. Now that there is an extra step in the calling path, because the calls go through both Hypercube and the ILECs, rather than just through the ILECs, Excel receives two sets of originating access invoices, one from Hypercube, and one from the ILECs. As Level 3 further explains, Hypercube has admitted sharing revenue with wireless carriers. This revenue sharing results in the wireless carriers indirectly imposing access charges on IXCs, and so violates the FCC's orders prohibiting CMRS carriers from imposing originating access charges on interexchange carriers ("IXCs") without the IXC's consent.[1]

3. Hypercube and Excel are currently in litigation pending before the U.S. District Court for the Northern District of Texas, Hypercube Telecom, LLC v. Comtel Telcom Assets, LP d/b/a Excel Telecommunications, Case No. 3:08-CV-2298-B (the "Texas Federal Court" and the "Texas Litigation"). Various issues raised in the Level 3 Petition and additional pertinent issues not raised by Level 3 are pending before the Texas Federal Court. Excel at this time expresses no position on the relationship between this proceeding and the Texas Litigation, but believes it is appropriate to inform the FCC of the existence of that litigation which concerns the same Hypercube practices as Level 3's Petition.

4. Excel learned of the existence of the Level 3 Petition only a few days ago. Excel submits this short filing today as today is the due date for the filing of reply comments. 47 C.F.R. § 1.45(c).

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[1] *See Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, 17 FCC. Rcd. 13192, ¶¶ 8-9, 12 (2002); *see also Eighth Report and Order and Fifth* Order *on Reconsideration, in the Matter of Access Charges Reform*, 19 FCC.Rcd. 9108, ¶ 16 (2004) ("8th Report and Order")

5. So that more complete reply comments can be prepared, Excel respectfully moves pursuant to Section 1.46 of the Commission's Rules for an extension through June 15, 2009 of the due date for the filing of reply comments in this proceeding. Undersigned counsel has contacted counsel for Petitioner Level 3, who indicated he has no opposition to a short extension of the reply comment deadline (specific dates were not discussed). As required by Rule 1.46(c), these Initial Comments and Motion for Extension have been served on Counsel for Petitioner as well as Counsel for Hypercube, and the undersigned has left a voicemail with FCC Staff indicating that this Motion has been filed.

Dated June 1, 2009

Respectfully submitted,

Comtel Telcom Assets LP d/b/a
Excel Telecommunications,

By its attorneys,

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Certificate of Service

I hereby certify that the foregoing document was served via electronic mail (hard copy to follow by first class mail tomorrow) on the following this 1st day of June, 2009:

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