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October 25, 2010

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: Written Ex Parte Submission, WC Docket No. 05-25

Dear Ms. Dortch:

In a meeting on October 21, 2010, Angela Kronenberg, legal advisor to Commissioner Mignon L. Clyburn, asked Level 3 Communications, LLC about past instances in which the Commission had taken action to remedy termination penalties or similar contract/tariff provisions that were viewed as locking up customers. The Commission did take such action in at least three cases of which we are aware:

- 1) *Expanded Interconnection with Local Telephone Company Facilities*, 8 FCC Rcd 7341 (1993), requiring ILECs to modify certain special access termination liability provisions in light of the introduction of expanded interconnection.
- 2) *Competition in the Interstate Interexchange Marketplace*, 7 FCC Rcd 2677, 2681-82, paras. 23-28 (1992); requiring AT&T to allow termination of 800 services for a period of time after the introduction of 800 number portability.
- 3) *Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands*, 6 FCC Rcd 4582, 4583-84 (1991); GTE Airfone was required to permit termination of existing contracts without penalty, after the Commission opened the air/ground telephone service to new entry.

We note that before the Commission began its program of streamlined regulation and forbearance in the late 1970s, virtually all regulated services were provided under tariffs, not contracts. Under that regime, the Commission was more likely to consider the reasonableness of termination liabilities *ex ante*, instead of having to modify them *ex post*, which may explain the apparent absence of earlier cases of this nature.

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If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

*/s/ electronically signed*

Andrew D. Lipman

cc (by e-mail): John Ryan  
Angela Kronenberg