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Level(3)™
COMMUNICATIONS

December 7, 2010

Ex Parte Submission – Filed Electronically Via ECFS

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

RE: Notice of Telephonic *Ex Parte* Communication, Preserving the Open Internet GN Docket No. 09-191; Broadband Industry Practices WC Docket No. 07-52 & Docket 10-127 (Framework for Broadband Internet Service).

Dear Ms. Dortch:

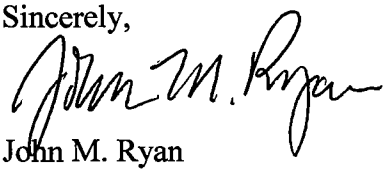
On December 6, 2010, Bob Yates (Assistant Chief Legal Officer for Level 3) and I spoke via telephone with Zac Katz, Paul de Sa, Bill Lake, Sharon Gillett and Henning Schultzrinne regarding the interconnection dispute between Comcast and Level 3. During the call, we emphasized our view that the dispute with Comcast was not simply a narrow commercial dispute, as Comcast has claimed. We also explained that, because of Comcast's dominant control over access to its subscribers and because Comast is the largest broadband access provider in the country, a refusal by Comcast to interconnect on fair and equitable financial and technical terms has a potentially large and negative impact on the availability of content on the Internet.

During the call, we stated that Comcast has leveraged its dominant control over its local access network to force Level 3 to purchase from Comcast a service – backbone IP (Internet Protocol) service – that Level 3 does not need or want to purchase. Comcast has conditioned delivery of content to its requesting subscribers (a market for which there is no effective competitive alternative) on Level 3's purchase of "backbone" services from Comcast. In fact, the purported "backbone" service agreement that Comcast is forcing on Level 3 requires Level 3 to deliver traffic to Comcast in a location that is geographically closest to the end destination of the traffic – meaning that *Level 3's* is required by the agreement to get traffic to Comcast at points close to the subscribers that request the traffic, and use of Comcast's backbone is eliminated or significantly reduced.

Level 3 stressed that allowing Comcast to leverage its control over access to its subscribers threatens not only the open Internet, but also threatens competition in what until now has been a highly competitive market for high-speed Internet transport services within the backbone.

Level 3 indicated that we were not demanding compelled interconnection on unreasonable terms. Rather, we believe that the investment and expense incurred by each interconnecting backbone network ought to be equitably distributed between the two networks. Equalizing investment and expense requires exchanging traffic in the right locations in order to balance the use of each party's backbone infrastructure. We explained that the level of investment required by both interconnecting networks is not related to the ratio of sent traffic to received traffic. Instead, the aggregate capacity needs of paying customers on each end of the communication drives the need to augment network facilities. We further stressed that neither interconnecting network should be permitted to unfairly subsidize its affiliated "first mile" or "last mile" network by demanding a payment from a non-affiliated backbone provider that has otherwise agreed to equitably interconnect.

Sincerely,



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