December 14, 2010

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

**Re:** *Preserving the Open Internet* GN Docket No. 09-191

Dear Ms. Dortch:

On December 13, 2010, Mathew Sewell, Jonathan Aufderheide, and the undersigned met with Sharon Gillett, Marcus Maher, and Tim Stelzig of the Wireline Competition Bureau along with Julius Knapp, of the Office of Engineering and Technology and Henning Schulzrinne, a visiting engineering Fellow to discuss the interconnection dispute between Level 3 Communications ("Level 3") and Comcast Corporation ("Comcast"). Pursuant to Section 1.1206 of the Commission's rules, this letter summarizes the issues discussed at this meeting.

We began by summarizing Global Crossing's interest in the matter. We explained that Global Crossing was a Tier 1 Internet backbone operator with settlement-free peering relationships with both Level 3 and Comcast. We further explained that Global Crossing is concerned that Comcast's unilateral efforts to emphasize traffic "balance" as the primary consideration for maintaining peering relationships represents a radical change in peering practices and was going to effectively result in the establishment of a new "Tier 0" category of peering open only to carriers ("eyeball networks") providing mass-market broadband Internet access.[1] We explained that traffic balance has historically never been a primary consideration amongst peers and that today less than a handful of carriers (out of literally hundreds) around the world emphasize traffic balance in their peering relationships. We noted that the motives for those carriers that do emphasize traffic balance should be considered in the context of their overall business plans. We described the more relevant peering criteria as including (1) the

[1] In its December 7, 2010 *ex parte*, Comcast claims it sends as much traffic as it receives with its network peers and cites to a Nanog presentation on the topic. Comcast neglects to note that the information contained in that presentation was self-reported.

number of announced routes, (2) the extent of customer interaction between the networks (*i.e.*, the "community of interest" that exists between the customers of each network), (3) the scale and scope of the networks, and (4) customer requirements of each network.

We further explained that the practical effect of a peering policy that emphasized traffic balance is to effectively exclude the delivery of high-quality video content from peering arrangements due to the high volume of such content and the high bit rates of the content relative to voice, text and data. Excluding video content from peering arrangements would require the establishment of a separate charging regime for video content delivery which could dramatically alter the current market dynamics for content delivery over the Internet and result in higher prices for such services.

We explained to the Commission that its precedents concerning ISP-bound traffic,[2] particularly the principles concerning cost recovery and the impact of reciprocal compensation on competitive markets, are directly applicable to the instant dispute and should be reiterated in the context of the expected December 21, 2010 Order in the instant docket. We urged the Commission to reiterate these principles so that carriers understand the parameters of their ability to offer such features as "tiered pricing" or "priority delivery" services.

Finally, we addressed the relative competitiveness of Internet routing. We noted that the majority of customers of traditional Internet backbone operators are typically "multi-homed", meaning they take service from multiple Internet backbone operators. This ensures those customers will not experience disruption in the event of a service outage or contract dispute with any single Internet backbone operator. It also means that network peers seeking to route to those customers have multiple route choices as well. Conversely, the "eyeball" customers of ISPs are single-homed with no alternative in the event of a service disruption or contract dispute and network peers have no option other than the ISP for routing purposes.[3] We submit that this lack of routing options is what enables broadband ISPs to exert influence in the peering relationships disproportionate to their network scale and scope.[4] A lack of routing options combined with the heavily in-bound nature of their traffic flow allows broadband ISPs to distort the peering market in the same manner the dial-up ISPs distorted the inter-carrier compensation regime for telephony services.

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[2] *Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order in CC Docket 99-68, adopted April 18, 2001 ("*ISP-bound Order*").

[3] We find no evidence to support Comcast's claims that there are "hundreds" of transit routes available to reach its customers and in any event, paying transit to reach Comcast means by definition that you are no longer peering with Comcast.

[4] We also noted that Level 3 commands fully one-third of the Internet address space and the suggestion from Comcast that Level 3 is not a peer is unreasonable on its face.

Please contact me if you have any additional questions regarding these issues.

Sincerely,

/s/

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