

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Hypercube Telecom, LLC (U-6592-C)
Complainant,

v.

Level 3 Communications, LLC (U-5941-C)

Defendant.

C.09-05-009

SECOND DATA REQUESTS AND REQUESTS FOR ADMISSIONS OF LEVEL 3 COMMUNICATIONS, LLC (U-5941-C) TO HYPERCUBE TELECOM, LLC (U-6592-C)

Level 3 Communications, LLC (“Level 3”) requests that Hypercube Telecom, LLC (“Hypercube”) respond fully and in writing to the following Data Requests and Requests for Admissions (“Data Requests” or “Requests”) and serve its responses electronically upon Level 3’s counsel of record on or before January 28, 2010.

Definitions and Instructions

A. These Data Requests and each of them (“Data Request” or “Request”) pertain to documents, information, physical objects, and computer recorded information in your knowledge, possession, custody, or control, or in the knowledge, possession, custody, or control of your agents or representatives. Each Request is also a continuing Request for information and documents, which come into your control during the time in which this proceeding is pending.

B. With respect to any document responsive hereto which has been destroyed, lost, or is no longer in your possession or subject to your control, please

submit a statement setting forth as to each, a description of the item, its disposition, the date of disposition, and the names of all those with knowledge thereof.

C. The words "document", "memoranda", "work papers", "notes", "correspondence", "item", and "record", include any physical object, written, printed, typed, recorded or graphic, however produced or reproduced, whether sent, received or neither, including originals, copies and drafts, and including but not limited to: correspondence, email, telecopier correspondence, messages, reports and recordings of telephone or other conversations and of interviews and conferences, memoranda, notes, opinions, records, balance sheets, income statements, monthly statements, book entries, account letters, ledgers, journals, books or records of accounts, summaries of accounts, purchase or sales orders, invoices, vouchers, bills, receipts, checks stubs, cancelled checks, drafts, leases, contracts, offers, desk calendars, appointment books, diaries, expense reports, summaries, transcripts, minutes, reports, affidavits, statements, questionnaires, answers to questionnaires, plans, specifications, lab books and notations, data notations, workpapers, confirmations, formula, studies, forecasts, projections, analyses, evaluations, statistical records, tabulations, calculations, charts, graphs, surveys, renderings, diagrams, photographs, recordings, films, video recordings, microfilms, papers, books, periodicals, pamphlets, newspaper articles or clippings, publications, schedules, lists, indexes, all other records or information kept by electronic, photographic, mechanical or other means, and any item similar to the foregoing, however denominated, whether currently in existence or already destroyed.

D. As used herein, the words "Hypercube" or "Company" or "you" or "your" refer to the Complainant/Counter-respondent in this proceeding and to any predecessor,

successor, or affiliated corporations, their present and former directors, officers, agents, representatives, employees, attorneys, and all other present or former persons, corporations, companies, partnerships, or organizations acting or purporting to act on behalf of Hypercube.

E. These Requests are directed to all documents and information in your possession, custody or control. A document is deemed to be in your possession, custody or control if you have possession of the document, have the right to secure such document or communication from another person having possession thereof, or the document or communication is reasonably available to you (including those documents or communications in the custody or control of your company's present employees, attorneys, agents, or other persons acting on its behalf and its affiliates. In response to Requests which seek the production of documents contained in these Data Requests, you shall produce the documents, including all appendices, exhibits, schedules, and attachments that are most relevant to the Request.

F. If you are unable to produce a document or information based on a claim that the document is not in your possession, custody or control, state the whereabouts of such document or information, when it was last in your possession, custody or control, and provide a detailed description of the reason the document is no longer in your possession, custody or control, and the manner in which it was removed from your possession, custody or control.

G. Hypercube shall produce all responsive documents for inspection and copying unaltered and/or unredacted as they are kept in the usual course of business and organize and label them to correspond to the categories in this request. If the requested

documents are kept in an electronic format, you shall produce the requested document in such format. If any part of a document is responsive to any Request, the whole document is to be produced. If there has been any alteration, modification or addition to a document (whether in paper form or electronic), including any marginal notes, handwritten notes, underlining, date stamps, received stamps, attachments, distribution lists, drafts, revisions or redlines, each such alteration, modification or addition is to be considered as a separate document and it must be produced.

H. With respect to any responsive document to which Hypercube asserts a claim of privilege, you shall submit a list identifying each document. Identification shall include the (1) date of the document, (2) the names, addresses and capacity of those who have signed the document, (3) the names, addresses and capacity of those who participated in its preparation, (4) the addressee or addressees, (5) the person or persons by whom it was received, (6) the general subject matter thereof, (7) the present or last known location and custodian of the original (or, if that is unavailable, the most legible copy or duplicate thereof), (8) the names and addresses of those who have received a copy of the document, and (9) the basis for your claim of privilege.

I. Please answer each of these Requests separately and in the order that it is asked. The numbers of the answers should correspond to the numbers of the Data Requests being answered. In addition, copy each question immediately before the answer. For your convenience in answering, an electronic copy of these Requests is being provided in MS Word format. Following each answer, identify the person or persons responsible for the answer and indicate what person or witness provided responsive information or documents, and where applicable, what witness will sponsor each answer

in testimony and identify the name, title and work address of any person that assisted in the preparation of such answer.

J. In response to Data Requests asking you to identify documents or other items, information or materials for disclosure, please identify the document(s) or other item(s), information or material(s) in sufficient detail so that they can be produced in response to a separate Request for Production, if necessary. Such identification shall contain the number (and subpart, if applicable) of the data request seeking the identification and the page count or description of the document or item. Additionally, to the extent known, the listing shall include the author, publisher, title, date, and any “Bates” or other sequential production numbering for the document or item. When responding to the Data Requests, please produce copies of all documents, other items, information or materials that were identified in response to a request or directive to “identify for disclosure” in these Data Requests. For each document or other item, please identify by number (including subpart, if any) the Data Request which caused the “identification for disclosure.”

K. These Data Requests are continuing in nature, and should there be a change in circumstances which would modify or change an answer you have supplied, you should change or modify such answer and submit such changes as a supplement to the original answer. Further, should a subsequent version(s) of a document be created or exist after the date of these Data Requests, such version(s) must be produced. Where prior versions or drafts of documents exist, please produce all such documents in your possession, custody or control.

L. Level 3 requests that you answer these Data Requests as required by local law and the rules of the California Public Utilities Commission.

DATA REQUESTS

2-1. Provide copies of all marketing and/or sales documents or materials which Hypercube has produced, is in possession of or that it utilizes in connection with its marketing and sales of the 8YY or Toll Free Origination services to CMRS providers at issue in this case.

RESPONSE:

2-2. Provide copies of all internal memorandums, analyses and documents which Hypercube has developed in connection with its marketing of the 8YY services at issue in this case to CMRS providers.

RESPONSE:

2-3. Provide copies of all sales training documents which Hypercube has developed or is in possession of in connection with its marketing of the 8YY services at issue in this case to CMRS providers.

RESPONSE:

2-4. Provide all documents used as customer sales presentations (for example: Powerpoint documents) which Hypercube utilizes in connection with its marketing of the 8YY services at issue in this case to CMRS providers.

RESPONSE:

2-5. Provide copies of all marketing and sales documents and materials which Hypercube utilizes in connection with its marketing and sales of the 8YY services at issue in this case to IXC's.

RESPONSE:

2-6. Provide copies of all Powerpoint or similar presentations which Hypercube utilizes in connection with its marketing of the 8YY services at issue in this case to IXC's.

RESPONSE:

2-7. Provide copies of all communications of every kind between Hypercube and any official or staff member of the California Public Utilities Commission in connection with tariff revisions to Hypercube's tariffs for the services at issue in this proceeding culminating in Hypercube's rates effective on January 1, 2009, including communications sent by and communications received by Hypercube.

RESPONSE:

2-8. Provide copies of all communications of every kind between Hypercube and any official or staff member of the California Public Utilities Commission in connection with Hypercube's tariffs for the services at issue in this proceeding, with regard to Hypercube's previous tariffed rate of \$0.025/minute and Hypercube's claimed compliance with the Commission's requirements effective April 1, 2008 (Complaint, para. 7), including communications sent by and communications received by Hypercube.

RESPONSE:

2-9. Please admit that Hypercube charges IXC's which directly connect with Hypercube on a per minute basis for CMRS originated 8YY traffic which Hypercube sends to the IXC's over said direct connection.

RESPONSE:

2-10. Please admit that Hypercube's per minute rates charged to IXC's which directly connect to Hypercube for CMRS originated 8YY traffic are lower than the per

minute rates which Hypercube charges Level 3 for CMRS originated 8YY traffic Level 3 receives indirectly.

RESPONSE:

2-11. In response to Level 3's First Data Request No. 10, Hypercube stated: "Subject to and without waiving its Specific or General Objections, Hypercube answers that, Hypercube's provision of originating access services pursuant to Hypercube's California tariff is similar to the description of an "intermediate carrier" in the *Eighth Report and Order*." Please explain specifically in what ways Hypercube's provision of originating access services pursuant to Hypercube's California tariff is similar to that description by the FCC.

RESPONSE:

2-12. Referring to the preceding Request, please describe any way in which Hypercube's provision of originating access service pursuant to its California tariff is different than the description of an intermediate carrier in the *Eighth Report and Order*.

RESPONSE:

2-13. Is the per minute rate which Hypercube charges Qwest for the delivery of CMRS originated 8YY traffic lower than the per minute rate which Hypercube charges Level 3 for CMRS originated 8YY traffic? For purposes of this question, please disregard whether the subject traffic is delivered via the ILEC tandem or via a direct connection, responding only as to the per minute rate charged.

RESPONSE:

January 13, 2010

Level 3 Communications, LLC

By: _____/s/_____

Richard H. Levin
Attorney at Law
130 South Main St., Suite 202
Sebastopol, California 95473-0240
Tel.: 707.824.0440
Fax: 707.788.3507
Email: rl@comrl.com
and

Gregory L. Rogers
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021
Tel. 720.888.2512
Fax: 720.888.5134
Greg.rogers@level3.com

Its Attorneys