BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Hypercube Telecom, LLC (U-6592-C), Complainant, vs. Level 3 Communications, LLC (U-5941-C), Defendant.	C.09-05-009

RESPONSE OF LEVEL 3 COMMUNICATIONS LLC
TO MOTION OF HYPERCUBE TELECOM LLC FOR LEAVE TO REPLY TO
RESPONSE OF LEVEL 3 TO HYPERCUBE APPLICATION FOR REHEARING

I. Introduction

On June 28, 2010, Hypercube filed a motion seeking to file a reply which is not permitted by the Commission's Rules of Practice and Procedure. In that filing, Hypercube reargues matters which it has already had the opportunity to comment upon and brief. Compounding its non-compliance with the applicable rules, Hypercube weaves through its motion the same arguments contained in the document which it proposes to file, and attaches to its motion the document it seeks leave to file--in effect filing that document even if its motion is denied and the attachment stricken. Level 3 not only opposes Hypercube's motion, but also believes that the Commission should strike the entire filing from the record.

II. The Applicable Rules Do Not Allow for A Reply

Commission Rule 16 governs rehearing of decisions of the Commission. Rule 16(d) provides for the filing only of the request for rehearing and an optional response by

the opponent of the rehearing. It does not provide for any other responsive filings, including a reply to a response.

> A response to an application for rehearing is not necessary. Any response may be filed and served no later than fifteen days after the day the application for rehearing was filed. In instances of multiple applications for rehearing the response may be to all such applications, and may be filed 15 days after the last application for rehearing was filed. The Commission is not obligated to withhold a decision on an application for rehearing to allow time for a response to be filed.

This contrasts with Commission Rule 11.1(f) governing other motions or requests, which provides that a reply may be filed with the permission of the Administrative Law Judge.

> With the permission of the Administrative Law Judge, the moving party may reply to responses to the motion. Written replies must be filed and served within 10 days of the last day for filing responses under subsection (e) unless the Administrative Law Judge sets a different date. A written reply must state in the opening paragraph that the Administrative Law Judge has authorized its filing and must state the date and the manner in which the authorization was given (i.e., in writing, by telephone conversation, etc.).

Clearly, where the Commission wanted to provide a potential opportunity in its Rules for a reply, it did so. For motions or requests prior to a decision, replies may be permitted.[1] For applications for rehearing of decisions, the Commission does not provide such an opportunity.

Hypercube's stated reasons for filing show that it just disagrees with Level 3 as well as the Commission and wants another opportunity to repeat the same losing arguments one more time. Hypercube is not permitted to have the last word at this stage of the proceedings.

Therefore, Hypercube's motion should be denied.

[1] However, the Commission's rules on comments on proposed and recommended decisions do not provide for a reply. Rules 14.3(a), (d).

III. The Commission Should Strike the Entire Filing

As noted, Hypercube goes well beyond seeking to file a reply; by attaching the reply to its motion, Hypercube hopes to add indirectly to the record what the Commission Rules will not allow it to do directly. Moreover, Hypercube weaves into its motion the same arguments which are contained in the document it proposes to file,[2] further guaranteeing that its additional filing on these issues would be part of the record, even if the attachment were stricken. Therefore, in fairness to Level 3, this improper conduct should be dealt with by striking the entire filing, including the motion and attachment, from the record.

IV. Conclusion

For the reasons stated, the Commission should deny Hypercube's motion and strike the motion and attachments from the record of the case due to Hypercube's violation of the Commission's Rules.

Dated: June 30, 2010

Respectfully submitted,

Level 3 Communications, LLC

By:_____/s/_____

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and

[2] Hypercube filed a three page motion including a version of its arguments, seeking to file a reply consisting of about five pages of text.

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