

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Level 3 Communications LLC) WC Docket No. 03-266
)
Petition for Forbearance Under)
47 U.S.C. Section 160(c) from Enforcement)
of 47 U.S.C. Section 251(g), Rule 51.701(b)(1),)
and Rule 69.5(b))

COMMENTS OF SPRINT CORPORATION

Sprint Corporation, pursuant to the Public Notice released on January 2, 2004 (DA 04-1), hereby respectfully submits its comments opposing the above-captioned petition for forbearance filed by Level 3 Communications.

In its petition, Level 3 has requested that the Commission forbear from application of section 251(g) of the Act, the exception clause of section 51.701(b)(1) of the Commission's Rules, and section 69.5(b) of the Rules, to the extent that those provisions could be interpreted to permit local exchange carriers to impose interstate or intrastate access charges on Internet protocol (IP) traffic that originates or terminates on the public switched telephone network (PSTN), or on PSTN-PSTN traffic that is incidental thereto. IP-PSTN and "incidental" PSTN-PSTN traffic would be subject to Section 251(b)(5) (reciprocal compensation) requirements; ISP-bound traffic would remain subject to existing compensation rules. Level 3 asserts that grant of forbearance while the Commission completes its reform of the intercarrier compensation system will reduce regulatory uncertainty and associated costs, increase investment in advanced

services, and promote innovation (Petition, p. 38); that enforcement of the rules at issue here is not necessary to ensure that charges for voice-embedded IP communications are just and reasonable (p. 45); and that enforcement is not necessary for the protection of consumers (p. 48).

As discussed briefly below, the issues raised in Level 3's petition are better addressed in the forthcoming rulemaking proceeding (WC Docket No. 04-36) which will examine the appropriate regulatory framework for VoIP services in a comprehensive fashion. Sprint also is concerned that Level 3 has underestimated the harm that would result from grant of its petition. Level 3's petition should accordingly be denied.

1. Issues Raised by Level 3 Are More Appropriately Considered in the Forthcoming VoIP Rulemaking Proceeding.

As Level 3 correctly points out (Petition, p. 20), the existing intercarrier compensation mechanisms are tangled and often irrational, with intercarrier payments varying substantially depending upon the jurisdiction of the call (local, intrastate, or interstate), the identity of the carrier (local carrier, IXC, ESP, CMRS provider), and type of traffic (telecommunications, information service, ISP-bound). Sprint heartily agrees that rational reform of this patchwork of rules is critical to the health of the industry, and is long overdue. However, Level 3's proposal does nothing to rationalize the regulatory structure; to the contrary, it simply carves out yet another exception to existing rules, exempting "voice-embedded IP services" from paying switched access charges even when such services use local exchange networks in exactly the same fashion as other traffic which is subject to access charges. And, this carve-out could exist for at least several years: Level 3's forbearance request extends until the Commission "completes its work to develop a comprehensive, uniform intercarrier compensation regime" (Petition,

p. 2). Even if the Commission were to adopt an order “fixing” intercarrier compensation today, it is likely that it would transition to the new regime and that such a transition would take place over a several year period.

Given what is expected to be an ever-growing volume of voice-embedded IP traffic, the Commission must carefully consider the impact of a multi-year “IP carve-out” not just on the VoIP segment of the market, but also on competition in the voice market generally, on LEC access revenues, and on universal service. Regulation of VoIP services cannot be considered in a vacuum, and the ramifications of an IP carve-out are best considered in a comprehensive fashion.

The Commission has already initiated such a broad proceeding, adopting a NPRM which will examine “the appropriate regulatory treatment of Internet services,” specifically considering “which regulatory requirements – for example, those relating to E911, disability accessibility, access charges, and universal service – should be extended to different types of Internet services[,]. . . the legal and regulatory framework for each type of Internet service and the relevant jurisdictional considerations for each category.”¹ Because the record and the Commission’s findings in the rulemaking proceeding will directly address the narrower issues raised in Level 3’s petition (*i.e.*, the impact of access charges on voice-embedded IP traffic), as well as broader legal and social policy questions relating to VoIP regulation, it is reasonable to decide questions of access charge relief in the rulemaking rather than the forbearance proceeding. Because regulatory uncertainty is costly and undesirable (Level 3 Petition, p. 39), Sprint urges the

¹ “*FCC Moves to Allow More Opportunities for Consumers Through Voice Services Over the Internet*,” p. 2, news release issued Feb. 12, 2004.

Commission to issue an order in the rulemaking proceeding expeditiously, preferably before the statutory deadline for acting on Level 3's petition.

2. Level 3 Underestimates the Harmful Effects of its Forbearance Request.

Grant of Level 3's petition would undoubtedly benefit providers of voice-embedded IP traffic by minimizing intercarrier compensation costs associated with such traffic. This could indeed stimulate demand for and deployment of such services.

However, grant of the instant petition could also have harmful spillover effects on other parts of the telecommunications industry. For example:

- Grant of Level 3's petition would give an unwarranted cost advantage to providers of VoIP services over other voice service providers who would continue to be subject to access charges. Voice service providers that do not immediately qualify for the IP carve-out would have a strong incentive to accelerate a move to an IP-based network as an access avoidance strategy, thereby intensifying the pressure on access charges and universal service.

- Local exchange carriers who currently (and legitimately, given the rules now in effect) rely upon access charge revenue streams to maintain and upgrade their networks would experience a likely sharp decline in those revenues.²

- Despite Level 3's hopeful expectation that voice-embedded IP service providers will contribute fairly to universal service (Petition, p. 53), it is not at all clear that such providers do now or will in the future include the revenues associated with these services

² The loss of access revenues is likely to be greater than any increase in reciprocal compensation revenues. Sprint considers Level 3's assumption that LECs can make up the difference by obtaining a waiver of subscriber line charge caps, obtaining approval for above-band filings or for new state rates, or having federal or state retail rate limits set aside as confiscatory takings (Petition, p. 47) to be highly unrealistic.

in the revenue base used to calculate universal service contribution factors.³ A decline in contributory revenues will lead to a continuing escalation in the USF factor, so long as revenues are the basis for this calculation.

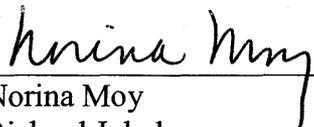
- To the extent that the outcome of the VoIP rulemaking proceeding differs from the outcome sought here by Level 3, grant of the instant forbearance petition could skew or upset service providers' business plans. For example, a decision by the Commission in the rulemaking proceeding that VoIP services should be subject to some form of access charges could cause serious dislocations for service providers who entered the VoIP market on the assumption that the access charge exemption would continue indefinitely (or at least until full intercarrier compensation reform is achieved).

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The issues raised in Level 3's forbearance petition, and the impact of Level 3's requested relief, are best addressed in the comprehensive VoIP rulemaking proceeding currently underway. Level 3's petition should accordingly be denied.

Respectfully submitted,

SPRINT CORPORATION



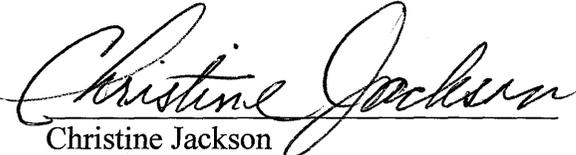
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³ Vonage, for example, apparently does not report its VoIP revenues for federal USF contribution purposes.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION** was sent by electronic mail or by United States first-class mail, postage prepaid on this the 1st day of March, 2004 to the below-listed parties.


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March 1, 2004

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