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**BY ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWB-204  
Washington, D.C. 20554

**RE: Ex parte presentation -- Level 3 Communications Petition for  
Forbearance, WC Docket No. 03-266**

Dear Ms. Dortch:

By this letter, Sprint responds to the notice of *ex parte* presentation filed by Level 3 Communications on January 24, 2005 in this docket. In that letter and in Level 3's Forbearance Petition, Level 3 seeks to exclude exempted rural carriers from its request that the Commission forbear from enforcing Section 251(g) and its applicable rules with the effect that incumbent local exchange carriers would be unable to assess interstate and intrastate access charges for IP-originated calls that terminate on the PSTN.<sup>1</sup> Level 3 states that it limits its request because "rural ILECs are more dependent on access charges than non-rural ILECs, and the issue of applicability of access charges is less likely to be disputed in areas in which a CLEC cannot even obtain direct interconnection under Section 251(c)(2)."<sup>2</sup>

Section 251(f)(1) of the Communications Act exempts carriers meeting the definition of "rural telephone company" under Section 3(37) from the interconnection and unbundling requirements imposed on incumbent local exchange carriers under Section

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<sup>1</sup> Sprint has opposed grant of the Level 3 petition for several reasons, in particular because it raises complex issues that are best addressed in a comprehensive rulemaking. Comments of Sprint, WC Docket No. 03-266 (filed Mar. 1, 2004).

<sup>2</sup> Letter of John T. Nakahata, Counsel for Level 3 Communications, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 03-266 at 3 (Jan. 24, 2005).

251(c) of the Act, if they meet the requirements of Section 251(f)(1)(A) as determined by the appropriate state public utilities commission. Almost all of Sprint Corporation's local exchange operating companies fall within one or more of the provisions in the definition found in Section 3(37) but, since the passage of Telecommunications Act of 1996, Sprint has not availed itself of the exemption afforded it under Section 251(f)(1). Instead it has chosen to pursue interconnection arrangements with other carriers under the interconnection and reciprocal compensation arrangements created by the Act and implemented by the Commission's rules, both as a competitive and as an incumbent local exchange carrier. At the time Sprint made this decision, it could not have anticipated the situation posited by Level 3, where calls that originate on an IP network and terminate on the PSTN would not be subject to the payment of interstate or intrastate access charges. Sprint contends that the relief sought by Level 3 is akin to changing the rules in the middle of the game, after Sprint and similarly situated ILECs committed to the game under the original set of rules. Level 3's offer to limit the scope of the forbearance it seeks to exclude exempt rural carriers does nothing to alleviate the impact on rural telephone companies that have not sought the protection of the exemption but instead have chosen in good faith to assist in promoting the local competition goals embodied in the Section 251 regime.

Sprint cannot be certain what the impact of a decision granting Level 3's petition would be on the access revenues of its local operating companies. Estimates that have been made are highly speculative because there can be no certainty of the rate at which consumers will convert from traditional telephone service to voice-over-IP service through broadband platforms. Nor can there be certainty of the calling patterns of VoIP users and how much these patterns will result in call termination on the public switched networks provided by rural carriers. These matters will be influenced by a variety of factors, including the availability and penetration rate for broadband services, the marketing and pricing practices of VoIP providers, and the Commission's actions on a number of other public policy questions, including inter-carrier compensation, universal service, and the several questions to be addressed in the IP-enabled services rulemaking. What is certain is that rural telephone companies serving high-cost areas, regardless of their exempt status under Section 251(f)(1), would be disproportionately disadvantaged if they are unable to maintain access charge revenues because the Commission decides that IP-originated traffic is not subject to terminating access charges. Level 3 has conceded that, more than other carriers, rural telephone companies depend on higher revenues from access charges to meet their cost requirements. Call-per-call, these carriers will suffer substantially reduced access revenues under the compensation regime sought by Level 3.

For the reasons cited by Sprint in its comments, the Commission should not grant Level 3's request for forbearance. If the Commission elects to grant Level 3's petition in any case, it should take account of the unexpected burden for non-exempt rural telephone companies. The Commission can reach a far more equitable result by simply extending the exception from the relative handful of rural carriers suggested by Level 3 to the broader class of carriers most adversely affected by the change in compensation sought by

Level 3 – that is, by restricting the forbearance relief to exclude not only rural carriers held exempt under Section 251(f) (1), but also to exclude any carrier that meets the definition of rural telephone company in Section 3(37).

This further limitation on the relief sought by Level 3 would serve several policy goals. It would allow all rural carriers in high-cost areas to avoid suffering the revenue impact of an access charge exemption for IP-originated traffic, not just those few carriers serving areas where no CLEC has successfully sought interconnection rights. It would reduce the inevitable increased demands on the Universal Service Fund that a decrease in access revenue would inevitably produce. And it would provide certainty for all interested parties as to the compensation regime to be applied during the pendency of the inter-carrier compensation and IP-enabled services rulemakings.

Sprint remains firm in its position that Level 3's petition should be denied, and action on the important issues raised in the petition should be in the context of a comprehensive rulemaking that can address all of the factors involved, not simply those that can be reached through forbearance. If the Commission does decide to grant Level 3's petition, it must increase the scope of the limitation on forbearance to include all rural telephone companies, not just those that qualify for exempt status under Section 251(f)(1).

Should you have any questions, please do not hesitate to contact us.

Sincerely,

David A. Nall  
Richard Juhnke  
Sonia Sakovich

Counsel for Sprint Corporation

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