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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Application of)	Case No. LEV-T-02-1
)	
LEVEL 3 COMMUNICATIONS, LLC)	REPLY COMMENTS OF LEVEL 3
)	COMMUNICATIONS, LLC
To Amend and Expand its Certificate)	
of Public Convenience and Necessity)	
to Provide Facilities-Based)	
Local Exchange and Interexchange)	
Telecommunications Services)	
Statewide, Including But Not Limited)	
To the Service Territory of Farmers)	
Mutual Telephone Company)	

COMES NOW Level 3 Communications, LLC (“Level 3”) and submits these comments in response to the comments of Farmers Mutual Telephone Company (“Farmers”) and the Idaho Telephone Association (“ITA”) in Case No. LEV-T-02-01 in which Level 3 seeks to expand its certificate of public convenience and necessity in Idaho.

Rural Exemption

In response to Farmers' and ITA's perceived threats to rural exemptions under Section 251(f) that may exist in Idaho, Level 3 hereby reiterates its request as stated in its initial application. Level 3 requests that the Commission grant Level 3 full facilities-based authority statewide with the qualification that Level 3 may not provide service using unbundled network elements of a LEC that qualifies for an exemption under Section 251(f), unless and until it submits a bona fide request for interconnection and the Commission determines that the request satisfies the requirement of Section 251(f).

Because Level 3 conditioned its request to specifically avoid any rural exemption implications at the outset, Level 3 does not believe there is any conflict between its request in this case and the concerns raised by Farmers and ITA in their comments. Issues relating to continued qualification for exemptions can, and should, be considered at such time as Level 3 makes a bona fide request for interconnection and the Commission is notified of the request pursuant to Section 251(f)(1)(B).

Given that there does not appear to be any substantive dispute before the Commission with regard to its application, Level 3 respectfully requests that the Commission grant Level 3's application as presented according to the modified procedure outlined by the Commission in its Notice of Modified Procedure.

Eligible Telecommunications Carrier

The Commission should reject ITA's request for evidentiary hearings to explore, "adoption of Section 253(f) protections against cherry picking" (ITA Comments, pg. 4) for at least three reasons.

First, by its express language, Section 253(f) is not applicable. It provides, "This subsection shall not apply—(1) to a service area served by a rural telephone company that has

obtained an exemption, suspension or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1)...” As noted above, Level 3 is not proposing to provide services pursuant to Section 251(c)(4) or to eliminate any Section 251(f) exemptions enjoyed by any ITA member. Further, it is inconsistent for the ITA to assert the rural telephone exemption from the obligations of Section 251(c) on the one hand and then claim that Level 3 must satisfy Section 214(e)(1) requirements based upon Section 253(f) on the other. Section 253(f) makes clear that the ITA companies cannot cling stubbornly to rural company protections and at the same time seek to burden Level 3 with ETC requirements.

Second, it would produce inconsistent results. One of ITA’s members, Project Mutual Telephone (PMT), is offering telephone exchange service in Qwest’s Burley exchange. There, PMT has access to approximately 30% of Qwest’s customers and actually provides service to approximately 4% of those customers. (*See In the Matter of the Application of US West for Deregulation of Basic Local Exchange Rates in its Burley, Idaho Exchange, Case No. USW-T-99-15, Order No. 28369*). PMT appears engaged in the exact activity—so called cherry picking—which ITA finds so worrisome in this case. ITA, to our knowledge, has never suggested that PMT should be subject to eligible telecommunication carrier requirements in the Burley exchange.

Third, the issue does not lend itself to consideration in a global proceeding. The language of Section 253(f) contemplates a fact-specific inquiry focused on discrete service areas in which a new entrant seeks to provide service.¹ The statute does not envision, and it would be fruitless to undertake, a state-wide examination of the issue.

¹ It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service.

CONCLUSION

For the reasons stated herein Level 3 respectfully requests that the Commission enter its order granting Level 3's Application to expand its existing Certificate of Public Convenience and Necessity.

Dated this ____ day of April, 2002.

MCDEVITT & MILLER LLP

Dean J. Miller
Counsel for Level 3 Communications, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of April, 2002, a true and correct copy of the foregoing REPLY COMMENTS was forwarded with all required charges prepaid, by the method(s) indicated below to the following:

Conley E. Ward, Jr., Esq.	Hand Delivered	<input type="checkbox"/>
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DATED this _____ day of April, 2002.
