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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)
LEVEL 3 COMMUNICATIONS, LLC TO)
AMEND ITS CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
PROVIDE LOCAL EXCHANGE AND)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES STATEWIDE.)
_____)
)

CASE NO. LEV-T-02-1

SUPPLEMENTAL COMMENTS
OF THE COMMISSION STAFF

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Lisa D. Nordstrom, Deputy Attorney General, and in response to the comments of Farmers Mutual Telephone Company filed on March 28, 2002, submits the following supplemental comments.

BACKGROUND

On February 8, 2002, Level 3 Communications, LLC (“Level 3” or “Company”) filed an Application to amend its current Certificate of Public Convenience and Necessity. In Case No. GNR-T-98-13, the Commission granted Level 3 authority to provide facilities-based local exchange and interexchange services in the Qwest and Verizon service territories. Order No. 27855. Level 3 now seeks to expand its authority to provide such services statewide.

Level 3 states that it intends initially to expand into the service area of Farmers Mutual Telephone Company to offer service to, among other customers, internet service providers who currently do not have points of presence in many of Idaho's exchange areas. Level 3's Application further states that it intends to deploy an independent network by either building its own facilities or leasing the facilities of other carriers.

DISCUSSION

Staff believes that the process of certification or, in this case, expanding a company's certification, is a method of determining that a company has the necessary qualifications to provide service while still fostering competition in the local telecommunications market. Certification is a separate function from interconnection. Farmers' comments state that it does not object to the expansion of Level 3's certificate under certain conditions: first, that Farmers' Section 251(c) exemption is not terminated as a result and second, that Farmers' right to seek a modification of the obligations imposed by Section 251(b) or (c) is not waived. (Farmers' comments, pg. 3)

Farmers applied for an exemption of Section 251(c) obligations pursuant to Idaho Code 62-615(2), which the Commission approved in Order No. 27255. Pursuant to Order No. 27255, Farmers' exemption terminated on January 1, 2001. As to Farmers' second concern, Staff does not believe approval of Level 3's Application can be construed as a waiver by Farmers of its right to seek a modification of the obligations imposed by Section 251(b) or (c).

Farmers also points out that, under Section 253(f) of the 1996 Telecom Act, state Commissions "can require a competitive carrier seeking entry into a rural telephone company's service territory to meet an eligible telecommunications carrier's obligation to offer, and market, universal services throughout the rural company's territory before being permitted to provide such services." Farmers suggests that failure to require this of Level 3 would be unfair competition and not in the public interest.

Section 253(f) allows but does not require state commissions to obligate a competitive carrier to meet the obligations of an eligible telecommunications carrier, and Staff does not believe the Commission should require this of Level 3. Staff believes the Commission should approve Level 3's Application to expand its Certificate. Any decisions regarding Farmers' Section 251 obligations are best made when there is a bona fide request for interconnection.

Level 3 does not seek to interconnect with those companies that hold an exemption under Section 251(f) of the Act at this time.

As to the grant of a certificate for the entire state, Staff points out that other competing carriers currently have certificates to serve the entire state and could serve customers in Farmers' territory today. Examples include Comm South Companies, Inc. (GNR-T-99-12 Order No. 28243), Essex Communications (GNR-T-00-26 Certificate No. 387), and Pac-West Telecomm, Inc. (GNR-T-99-21 Certificate No. 373).

STAFF RECOMMENDATION

Based on Staff's review of the Application and comments filed in this case, Staff recommends approval of Level 3's Application for an amendment to its existing Certificate of Public Convenience and Necessity to allow the Company to provide telecommunications services statewide. Staff also recommends that the Commission not address whether Farmers has an applicable rural exemption until such time as Farmers' receives a bona fide request for interconnection.

Staff believes, because there are no factual issues to decide and adequate comments already appear in the record, that this matter does not require a hearing and that no oral arguments are necessary.

Respectively submitted this day of April, 2002.

Lisa D. Nordstrom
Deputy Attorney General

Technical Staff: Doug Cooley

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