

Level 3 Can't Duck Exchange Fees, CenturyLink Says

By **Christine Powell**

Law360, New York (January 5, 2016, 8:20 PM ET) -- Local telephone provider CenturyLink hit Level 3 Communications Inc. with a suit Monday in Colorado federal court alleging the company hasn't paid fees for calls beginning and ending in the same region, saying Sprint and Verizon have already lost the argument in multidistrict litigation that interexchange carriers are exempt from the fees.

CenturyLink Communications LLC and a slew of its local exchange carriers accused three Level 3 subsidiaries of withholding payment for access services owed since early 2014 on the assumption that the calls associated with the charges — so-called intraMTA calls, in which both parties are in the same major trading area— are exempt from the charges.

“Level 3 is relying on the very same arguments that Sprint and Verizon lost in the MDL proceeding,” the complaint says. “Thus, the court in the MDL proceeding has rejected the basis of Level 3’s withholding of payments for the CenturyLink LECs’ access charges.”

In the MDL, U.S. District Judge Sidney A. Fitzwater in November rejected the argument that interexchange carriers are exempt from paying the charges under Federal Communications Commission and court decisions, rebuffing Verizon Communications and Sprint Corp. in the lawsuit accusing local exchange carriers of overbilling for switched access charges for intraMTA calls.

In that ruling, Judge Fitzwater denied Verizon and Sprint’s request for an injunction barring local exchange carriers from assessing access charges on wireless carriers for calls within the same major trading area, saying neither the FCC nor Congress expressly took away local carriers’ rights to impose such a fee.

Duo County Telephone Cooperative Corp. Inc. and others filed a similar suit against Level 3 on Dec. 23 in Kentucky federal court, and Adams Telephone Co-Operative and others filed one on Dec. 28 in Illinois federal court.

According to CenturyLink’s Monday complaint, Level 3 has been refusing to pay some access charges since early 2014 for services it used to exchange calls between its long-distance network and one of CenturyLink’s local networks.

Level 3 has explained that it’s been withholding payment on some of these charges because it has “unilaterally determined” that they are for intraMTA calls, the complaint says. It has also withheld payment for charges that aren’t related to intraMTA calls, “purportedly to offset intraMTA-related

charges in prior billing periods,” it says.

CenturyLink contends that services it has provided to Level 3 when exchanging intraMTA calls are subject to state and federal charges, including access charges and late payment charges.

CenturyLink said that in refusing to pay the charges for intraMTA calls, Level 3 is relying on the same arguments Sprint and Verizon made in their suits against local exchange carriers concerning access charges on intraMTA calls, which were consolidated in the MDL in Texas federal court.

Sprint and Verizon argued that interexchange carriers are exempt from paying access charges for the exchange of intraMTA calls, but Judge Fitzwater held that the local carriers had the right to impose such fees.

Representatives for CenturyLink declined to comment Monday. Representatives for Level 3 did not respond to requests for comment.

CenturyLink is represented by Douglas P. Lobel and David A. Vogel of Cooley LLP.

Counsel information for the defendants was not immediately available.

The case is CenturyLink Communications LLC et al. v. Level 3 Communications LLC et al., case number 1:16-cv-00003, in the U.S. District Court for the District of Colorado.

--Additional reporting by Jacob Fischler and Jess Davis. Editing by Richard McVay and Brian Baresch.