

**STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
John A. Tuma	Commissioner

**Joint Application of CenturyLink, Inc. and Level 3 Communications, Inc., for Approval of a Transfer of Control and Related Transactions**      **Docket No.** \_\_\_\_\_

**PROPOSED PROTECTIVE ORDER**

**Purposes and Objectives of this Order:**

The purpose of this Protective Order (Order) is to facilitate the efficient disclosure of documents and information during the course of these proceedings and to protect against the unauthorized disclosure of: (1) protected data within the meaning of Minn. R. 7829.0100, subp. 19a (2015); or (2) proprietary information, trade secrets, or not public data, within the meaning of Minn. R. 1400.6700, subp. 4 (2015).

Several government agencies are likely to have access to Protected Data in this proceeding; include officials of the Minnesota Public Utilities Commission (Commission), the Office of Administrative Hearings (OAH), the Office of the Attorney General, the Minnesota Department of Commerce, the Minnesota Department of Administration, MN IT Services (MN.IT), and the Minnesota State Historical Society. These entities are subject to various laws and rules regulating access to data, including the Minnesota Government Data Practices Act (MGDPA), the records retention requirements of Minn. Stat. §§ 138.163-.226 (2015), as well as agency-specific rules and procedures, including Minn. R. 7829.0500 (2014) and the Commission’s September 1, 1999, *Revised Procedures for Handling Trade Secret and Privileged Data* (Commission Procedures).

Further, the definition of “agency” under the MGDPA is both expansive and comprehensive. It includes “the state, the University of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.” *See* Minn. Stat. § 13.02, subd. 17 (2014).

The access and use of Protected Data in this proceeding by, and to, government agencies, is governed by Minnesota law and paragraph 17 of this Protective Order.

Access to, and use of, Protected Data in this proceeding by non-agency parties is strictly controlled by each of the terms of this Order. The parties, other than government agencies, are alternatively referred to as parties, persons or entities.

During this proceeding, it is likely that the parties will request, access, use, file and safeguard Protected Data as well as certain competitively-sensitive Protected Data which will be designated “Highly Sensitive Protected Data” and be subject to a more limited distribution.

Based upon the submissions of the parties and participants, and upon the hearing record,

**IT IS HEREBY ORDERED THAT:**

**Protected Data**

1. The “Protected Data” as used in this Order is defined as: (1) protected data within the meaning of Minn. R. 7829.0100, subp. 19a; and (2) proprietary information, trade secrets, or not public data within the meaning of Minn. R. 1400.6700, subp. 4.

2. All Protected Data furnished in this proceeding shall be:

(a) deemed furnished pursuant to this Protective Order;

(b) treated by all persons accorded access thereto as constituting confidential business information;

(c) be provided in a manner consistent with Minn. R. 7829.0500, and marked substantially as follows: (i) the first page or cover page of a document from which Protected Data has been excised must be clearly captioned in bold print “**NOT PUBLIC DOCUMENT – NOT FOR PUBLIC DISCLOSURE**” or with words of similar import; (ii) every page on which Protected Data appears must be similarly marked; and (iii) the Protected Data must be underlined, placed in brackets, or otherwise clearly identified as the data which is to be protected from disclosure;

(d) used solely in accordance with this Protective Order;

(e) used solely for the purposes of this proceeding, and not used or disclosed for any other purpose or in any other manner, without a prior Order from the Commission or any Administrative Law Judge; and

(f) be accompanied by one copy of the document with the Protected Data redacted, with the first page or cover page of the document from which the Protected Data has been excised clearly captioned in bold print “**PUBLIC DOCUMENT – NOT PUBLIC DATA HAS BEEN EXCISED.**”

3. For purposes of this proceeding, notes or summaries made about or prepared as the result of a review of Protected Data are subject to the terms of this Protective Order. Any Protected Data received in photographic, digital or electronic formats shall be identified as protected information by the producing party, through means that are appropriate to the medium, and shall be handled by the recipient in a manner suitable to protect against unauthorized disclosure.

## Highly Sensitive Protected Data

4. Any person, whether a party or non-party, may designate certain competitively sensitive Protected Data as “Highly Sensitive Protected Data” (herein referred to as “Highly Sensitive Protected Data”) if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Sensitive Protected Data includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain competitively-sensitive Protected Data, such as information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider’s network facility location detail, revenues, costs, and marketing, business planning or business strategies. Highly Sensitive Protected Data does not include certain data (FCC Form 477 data) in possession of the Federal Communications Commission (FCC) pursuant to 5 U.S.C. § 552(b)(4). The disclosure of that data by the FCC is governed by federal law, including separate non-disclosure agreements between the FCC and persons to whom such data may be released by the FCC, and by 47 C.F.R. 0.0457, 0.461, and 0.463.

5. Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Sensitive Protected Data to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Sensitive Protected Data must be marked by a stamp that reads:

“NOT PUBLIC DOCUMENT - HIGHLY SENSITIVE PROTECTED DATA - USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. \_\_\_\_\_”

Placing a “Highly Sensitive Protected Data” stamp on the first page of a document indicates only that one or more pages contain Highly Sensitive Protected Data and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Sensitive Protected Data must be marked separately to indicate Highly Sensitive Protected Data, even where that information has been redacted. The unredacted versions of each page containing Highly Sensitive Protected Data, and provided under seal, should be submitted on paper distinct in color from Protected Data described in section 2(c) of this Protective Order. The Commission or Administrative Law Judge will open a separate e-docket file in which Highly Sensitive Protected Data Information may be filed.

6. Parties seeking disclosure of Highly Sensitive Protected Data must designate the person(s) to whom they would like the Highly Sensitive Protected Data disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit “B” of the nondisclosure agreement. Parties seeking disclosure of Highly Sensitive Protected Data shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Sensitive Protected Data; (2) three in-house experts; (3) administrative or other support personnel working directly on materials for this proceeding and (4) a reasonable number of outside counsel and outside experts to review

materials marked as “NOT PUBLIC DOCUMENT-HIGHLY SENSITIVE PROTECTED DATA – USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. \_\_\_\_\_.” The Exhibit “B” also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Sensitive Protected Data and the person’s role in the proceeding. Highly Sensitive Trade Secret Information may not be disclosed to persons engaged in strategic or competitive decision making for any party, including, but not limited to, the sale or marketing or pricing of products or services on behalf of any party.

7. Any party providing Highly Sensitive Protected Data may object to the designation of any individual as a person who may review Highly Sensitive Protected Data. Such objection shall be made in writing to counsel submitting the challenged individual’s Exhibit “B” within five (5) business days after receiving the challenged individual’s signed Exhibit “B.” Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Highly Sensitive Protected Data. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party’s objection, the objecting party still objects to disclosure of Highly Sensitive Protected Data to the challenged individual, the Commission or Administrative Law Judge shall determine whether Highly Sensitive Protected Data must be disclosed to the challenged individual.

8. Copies of Highly Sensitive Protected Data may be provided to the in-house attorneys, in-house experts, outside counsel, outside experts, and court reporters who have signed Exhibit “B.” This paragraph does not limit any obligation or right parties may have to provide Highly Sensitive Protected Data to Government Agencies.

9. Persons authorized by this Protective Order to review the Highly Sensitive Protected Data will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 5. Any testimony or exhibits prepared that reflect Highly Sensitive Protected Data must be maintained in the secure location until removed to the hearing room. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Protected Data also apply to Highly Sensitive Protected Data.

10. Small Company. Notwithstanding anything to the contrary in this Order, persons authorized to review Highly Sensitive Protected Data on behalf of a company with less than 5,000 employees shall be limited to the following: (1) the company’s counsel or, if not represented by counsel, a member of the company’s senior management; (2) the company’s employees and witnesses; and (3) independent consultants acting under the direction of the company’s counsel or senior management and directly engaged in either of these proceeding who execute Exhibit B. Such persons **do not** include individuals primarily involved in marketing activities for the company, unless the party producing the information, upon request, gives prior written authorization for that person to review the Protected Data or Highly Sensitive Protected Data. If the producing party refuses to give such written authorization, the producing or receiving party may request an order from the Commission or Administrative Law Judge determining whether that person may review the Protected Data or Highly Sensitive Protected

Data. The producing party shall be given the opportunity to respond to the company's request before an order is issued.

### **Access to Protected Data**

11. All Protected Data made available pursuant to this Protective Order shall be given solely to:

- (a) counsel for the requesting party; or
- (b) other authorized persons who:
  - i. are designated by counsel as being the party's experts, witnesses or as directly working on hearing materials in this proceeding, and
  - ii. execute Exhibit A in a timely manner, as provided below, prior to their receipt of the Protected Data.

12. Protected Data shall not be used or disclosed except for purposes of this proceeding; including all subsequent appeals of the final order in this proceeding. Protected Data may not be used or referenced in other proceedings in Minnesota, or in any other jurisdiction, without the prior approval of the Commission or any Administrative Law Judge.

13. Unless otherwise provided in this Protective Order, all Protected Data will be safeguarded and handled in accordance with the Commission Procedures.

### **Nondisclosure Agreement and the 48-Hour Review Period**

14. Prior to giving access to Protected Data as contemplated in paragraphs 2-6 above to any expert or witness, whether or not such expert or witness is a person designated to testify in any such proceeding, counsel for the party seeking review of the Protected Data shall deliver a copy of this Protective Order to such a person; and such person shall agree in writing to comply with, and be bound by, the terms of this Protective Order.

15. Such Nondisclosure Agreement shall be delivered to counsel for the providing party at least 48 hours, excluding weekends and holidays, prior to the expert or witness gaining access to the Protected Data. Except for counsel, Protected Data shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached to this Order and incorporated as Exhibit A and until the 48-hour notice period required by this paragraph has elapsed.

16. If counsel for the providing party notifies the requesting party and the Commission or any Administrative Law Judge of an objection within the 48 hour period, no Protected Data shall be provided to the expert or witness until so ordered by the Commission or any Administrative Law Judge.

## Government Agencies

17. Government agencies are not subject to the terms of this Protective Order, except, while this matter is pending before the Commission or the OAH and as to matters within the jurisdiction of the Commission or the OAH, government agencies are subject to the terms of this Paragraph. Non-agency parties are also subject to the terms of this Paragraph.

(a) **Conflicts.** To the extent this Protective Order conflicts with or omits a matter otherwise required by the MGDPA, Commission rules or Commission Procedures, the requirements of the MGDPA, Commission rules or Commission Procedures shall control. Any provision of the Protective Order that is not consistent with an agency's duties under the MGDPA, Commission rules or Commission Procedures shall be of no effect with respect to the government agencies.

(b) **Experts.** A government agency may not provide Protected Data to an outside expert (a person not employed by said agency), who is providing assistance on this matter, until the outside expert has signed an Exhibit A Nondisclosure Agreement (and Exhibit B, as to Highly Sensitive Protected Data). Such an expert shall comply with the terms of the Protective Order, except where compliance is contrary to the requirements of the MGDPA, Commission rules or Commission Procedures.

(c) **Challenge to Protected Data Designation.** Upon a request by any party or government agency, and with ten (10) days prior notice, or such period as is determined by the Commission or Administrative Law Judge, the Commission or Administrative Law Judge may review confidential materials *in camera* and remove a designation of Protected Data.

(d) **Verbal Disclosure.** Protected Data may be verbally disclosed by government agencies during depositions or hearings in this matter upon prior notice to, and agreement of, the disclosing party or authorization by the Commission or Administrative Law Judge.

(e) **Transcripts.** Each disclosing party or government agency may designate portions of depositions or hearing transcripts as including Protected Data. The parties are permitted three business days after the transcript is made available to them to make such designations. The court reporter shall mark those portions of the transcript "**NOT PUBLIC DOCUMENT – NOT FOR PUBLIC DISCLOSURE**" or with words of similar import, consistent with the Commission Procedures and Minn. R. 7829.0500.

## Challenges to Protected Data Designation or Other Special Requests

18. This Protective Order shall not be construed as a ruling on the discoverability, confidentiality or validity of a designation as Protected Data of any information or document. Any party, upon five (5) days prior notice, may request, by an appropriate pleading, the re-designation of any materials denominated as Protected Data. Similarly, the parties may request

adjustments in the procedures for handling data that are set forth in this Order.

19. If the status of an item as Protected Data is challenged, resolution of any such dispute shall be made by the Commission or any Administrative Law Judge. If argument or a conference is needed to resolve such a dispute, those proceedings shall be conducted so as to ensure that only those persons duly authorized to have access to Protected Data are present. The transcript of any such proceedings shall be marked “**NOT PUBLIC DOCUMENT – NOT FOR PUBLIC DISCLOSURE**” unless the Commission or any Administrative Law Judge determines that the proceeding should not be classified as involving Protected Data.

20. Where reference to Protected Data is required in written pleadings, cross-examinations, briefs, argument or motions, it shall be by citation of the title, exhibit number, or by some other non-confidential description.

### **Use of Protected Data in Filings**

21. Use of or substantive references to Protected Data in filings shall be made in a separate “Not Public” pleading, exhibit, or brief that is filed and marked in a manner consistent with Minn. R. 7829.0500 and the Commission Procedures. This “Not Public” copy shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement. All the protections afforded in this Protective Order apply to materials prepared and distributed under this Paragraph.

### **Use of Protected Data in Depositions**

22. If, in the course of depositions, counsel for any party concludes that testimony or exhibits will involve Protected Data, counsel shall request that the court reporter record such testimony in a confidential transcript that is marked consistent with paragraph 10 (e) above. Exhibits which have been marked as involving Protected Data shall be attached to the confidential transcript and marked consistent with the Commission Procedures. Each party has the right, for up to three business days after the deposition is made available to them, to identify a transcript or exhibits as including Protected Data pursuant to this paragraph.

### **Use of Protected Data in Hearings or Meetings**

23. The receiving party shall not use Protected Data in a hearing without first (a) providing prior notice to the disclosing party regarding the information to be used, and (b) conferring with the disclosing party regarding limitations or procedures that can be used to avoid disclosing the confidential aspects of the information at issue to persons not otherwise entitled to receive such information. If the parties cannot reach agreement regarding the use of such information, then the dispute shall be submitted to the Commission or any Administrative Law Judge before the information is used or publicly disclosed. Without limiting the foregoing, no party shall refer to Protected Data on oral testimony, cross-examination or argument except in accordance with this paragraph.

## **Public Summaries**

24. To the extent required by the Commission Procedures or Minn. R. 7829.0500, the providing party shall prepare a written summary of the Protected Data referred to in this Order to be placed in the public record.

## **Return of Materials**

25. Unless otherwise ordered, all Protected Data,

(a) shall remain under seal, subject to the requirements of this Protective Order, and

(b) shall be destroyed, or returned to counsel for the disclosing party, within 30 days after final settlement or conclusion of the applicable matter including administrative or judicial review thereof, unless otherwise agreed by the disclosing party.

If the Protected Data is destroyed, the receiving party shall send a written communication to the disclosing party verifying destruction of the Protected Data.

## **Preservation of Confidentiality**

26. No person who receives, or is afforded access to, any Protected Data by reason of this Protective Order, shall use this data for purposes of business or competition, or any other purpose other than preparing for, or conducting, these proceedings. Each person with access to such data shall take reasonable precautions to keep the Protected Data secure from unauthorized disclosure.

## **Reservation of Rights**

27. The parties to this proceeding retain the right to object to the admissibility into the hearing record of any item furnished under the terms of this Order, on the grounds that the item is not relevant or material to the proceeding.

## **Inadvertent Disclosure**

28. No party waives its right to designate any documents, data, information, studies, or other materials as Protected Data by inadvertent disclosure; provided the disclosing party thereafter gives written notice to the recipient(s) of such information that it should have been designated as Protected Data. After receipt of such a notice, the information subsequently identified as Protected Data shall be treated as Protected Data for purposes of this Protective Order.

### **Disclosure of Protected Data to Unauthorized Person**

29. If material designated as Protected Data is disclosed by a party to any person other than those entitled to disclosure in the manner authorized by this Protective Order, the party responsible for the disclosure shall:

(a) immediately upon learning of such disclosure inform the designating party in writing, and by telephone call, disclosing all pertinent facts relating to such disclosure; and

(b) shall make every effort to prevent further disclosure by or to any unauthorized person.

If requested by the designating party, the disclosing party shall use its best efforts to retrieve the documents or tangible things from the unauthorized recipients. The parties thereafter shall make best efforts to resolve the matter. If the parties are unable to resolve the issue, any party may file and serve a motion requesting relief from the Commission or any Administrative Law Judge.

30. This Protective Order does not diminish any contractual, statutory, or other legal obligation, or any right or remedy of an aggrieved party, with respect to the improper release of Protected Data.

Dated: \_\_\_\_\_, 2017

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Daniel P. Wolf  
Executive Secretary

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**EXHIBIT A  
Nondisclosure Agreement**

I, the undersigned, acknowledge that I have read the attached Protective Order dated \_\_\_\_\_, 2017, in Minnesota Public Utilities Commission Docket No. \_\_\_\_\_, and understand and agree to be bound by all of its terms.

I agree not to disclose to any person or entity not authorized to receive materials designated “**PROTECTED DATA**,” “**NOT PUBLIC DATA**,” “**TRADE SECRET INFORMATION**,” or “**NONPUBLIC DATA**” under the terms of the Protective Order, or any copies or extracts of information derived from those items, which have been disclosed to me. I further agree to use any materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I submit myself to the jurisdiction of the Minnesota Public Utilities Commission for the purpose of enforcing the Protective Order.

Date: \_\_\_\_\_, 2017

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name of Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Name of Party

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**EXHIBIT B  
Highly Sensitive Protected Data**

I, the undersigned, acknowledge that I have read the attached Protective Order dated \_\_\_\_\_, 2017, in Minnesota Public Utilities Commission Docket No. \_\_\_\_\_, and understand and agree to be bound by all of its terms. I attest that I meet the criteria for access to Highly Sensitive Protected Data set forth in Paragraph 6 of the Protective Order.

I agree not to disclose to any person or entity not authorized to receive materials designated “HIGHLY SENSITIVE PROTECTED DATA,” “HIGHLY SENSITIVE NOT PUBLIC DATA,” “HIGHLY SENSITIVE TRADE SECRET INFORMATION,” or “HIGHLY SENSITIVE NONPUBLIC DATA” under the terms of the Protective Order, or any copies or extracts of information derived from those items, which have been disclosed to me. I further agree to use any materials disclosed to me solely for the purpose of this proceeding and for no other purpose.

I submit myself to the jurisdiction of the Minnesota Public Utilities Commission for the purpose of enforcing the Protective Order.

Date: \_\_\_\_\_, 2017

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Name of Employer

\_\_\_\_\_  
Job Title and Job Description

\_\_\_\_\_  
Name of Party