

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: May 18, 2017 **Agenda Item # 6

Company: CenturyLink, Inc. (CenturyLink); Level 3 Communications, Inc. (Level 3)

Docket No. **P-5733, et al./PA-16-1062**

In the Matter of the Joint application of CenturyLink, Inc. and Level 3
Communications, Inc. for approval of a Transfer of Control and Related
Transactions

Issue(s): Should the Commission Approve the transfer of control of Level 3
Communications, LLC (Level 3), Broadwing Communications, LLC, Global
Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., WiTel
Communications LLC, and Level 3 Telecom of Minnesota, LLC from Level 3 to
CenturyLink, Inc. (CenturyLink)?

Staff: Marc Fournier651-201-2214

Relevant Documents

Initial Filing Joint Application of CenturyLink, Inc. and
Level 3 Communications, Inc. for Approval of a Transfer of
Control and Related Transactions December 16, 2016

Comments of the Minnesota Department of Commerce March 23, 2017

Reply Comments CenturyLink, Inc. and
Level 3 Communications, Inc. April 24, 2017

Supplemental Comments of the
Minnesota Department of Commerce May 5, 2017

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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I. Statement of the Issue(s)

1. Should the Commission Approve the transfer of control of Level 3 Communications, LLC (Level 3), Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., WilTel Communications LLC, and Level 3 Telecom of Minnesota, LLC from Level 3 to CenturyLink, Inc. (CenturyLink)?

II. Background

On December 16, 2016, CenturyLink and Level 3 filed a joint application (Application) to the Minnesota Public Utilities Commission (Commission) for the indirect transfer of control of Level 3 Communications, LLC (Level 3), Broadwing Communications, LLC (Broadwing), Global Crossing Local Services, Inc. (GCLS), Global Crossing Telecommunications, Inc.(GCT), WilTel Communications LLC (WilTel), and Level 3 Telecom of Minnesota, LLC (Level 3 MN, and together, Level 3, Broadwing, GCLS, GCT, WilTel, and Level 3 MN, the Level 3 (Companies) from Level 3 to CenturyLink, Inc. (CenturyLink) (the Transaction).

On March 23, 2017, the Minnesota Department of Commerce (DOC) filed comments providing conditional support of the transaction.

On April 24, 2017, CenturyLink and Level 3 filed reply comments.

On May 5, 2017, the DOC filed supplemental comments.

Level 3

Through its operating subsidiaries, Level 3 offers a wide range of communications services over its broadband fiber-optic network, including IP-based services, broadband transport, collocation services and patented Softswitch-based voice services.

Level 3 Companies do not provide service to residential or small business customers with three or fewer lines. They serve enterprise, government and carrier customers.

CenturyLink

CenturyLink CenturyLink provides broadband, voice, video, data and managed services over a 250,000- route-mile U.S. fiber network and a 300,000-route-mile international transport network. CenturyLink offers communications services, including local and long-distance voice, wholesale local network access, high-speed internet, and information, entertainment, and fiber transport services through copper and fiber networks to consumers and businesses in 50 states.

CenturyLink also provides high-speed internet access services and data transmission services. In

certain local and regional markets, CenturyLink provides telecommunications services as a competitive local exchange carrier (CLEC). As of December 31, 2015, CenturyLink provided high-speed internet access services to over 6 million customers and had approximately 11.7 million access lines.

CenturyLink itself does not offer telecommunications services in Minnesota, but is the ultimate parent of the several Minnesota operating subsidiaries (the CenturyLink Companies), all of which are authorized to provide local exchange and interexchange services.

III. Parties' Comments

DOC: The DOC indicated the Commission has established a consistent precedent for requiring approval for any change of ownership affecting Minnesota telephone companies and telecommunications carriers. Commission approval is required for transactions where the ultimate ownership or control of either a telephone company or telecommunications carrier authorized to operate in Minnesota changes, or a telephone company's or a telecommunications carrier's Minnesota operations are affected by a merger or acquisition transaction. Commission approval is not required for corporate reorganizations in which ultimate ownership and control do not change and the operating company is not impacted by the reorganization. However, the control of the Level 3 Companies will be transferred to CenturyLink, and the Commission should review the Transaction to determine if it is in the public interest.

The proposed Transaction should be in the public interest. Despite the initial increased debt of the Applicants, projected synergies and Net Operating Losses (NOLs) are expected to minimize cash income taxes and increase cash flow to de-lever the balance sheet to pre-merger levels. Estimates of the Applicants' financial performances and investment activities through 2021 suggest that the Transaction will not threaten reliable services from the Applicants. Credit ratings do not deteriorate as a result of the Transaction, although caution is expressed regarding the credit outlook. Enterprise customers are expected to be offered a wider array of services to better compete to the benefit of state and local economies.

The combined company is expected to enable CenturyLink to more effectively provide Ethernet services to the enterprise market. CenturyLink acknowledges that it has not been as successful in selling Ethernet services as many of its competitors. CenturyLink was ranked fifth among Ethernet providers in total retail port sales. However, Level 3 has a long history of providing innovative Ethernet services, but it lacks the same degree of fiber connectivity to buildings as CenturyLink. The combined company is expected to bring substantial operational and service benefits to their enterprise customers.

Enterprise customers are also expected to benefit from the combination of CenturyLink's and Level 3's expertise in the provision of managed services, content delivery networks, and internet protocol-based (IP) virtual private network (VPN) capabilities. Although CenturyLink has one of the largest Multiprotocol Label Switching VPN networks in the country, it has a comparatively

smaller footprint internationally than Level 3s IP VPN services. By combining resources, the Applicants expect to better provide their customers with a broader array of these services.

The Applicants plan to combine the best aspects of their respective security and intelligence services to enable customers to protect their data and systems. As such, they will reduce the need for customers to develop, deploy and maintain their own security technology and manage their cybersecurity issues.

Commission Approval of Certain Workforce Reductions

Despite the benefits that are expected from the Transaction, previously described synergies could result in the loss of critical jobs that support customer service. In order to protect customers from the possible loss of customer-facing jobs, the Commission may require prior approval for any action effecting an involuntary reduction in workforce of customer facing jobs in Minnesota. The DOC recommended that this requirement be in place for a period of two years from the date of the issuance of the Commission's order so that the existing level of customer service is maintained. The exception would exist for retirement incentives.

The Applicants cite the DOC's recommendations in four dockets as support for its statement that the DOC's conditions in this docket are unprecedented.

The DOC normally requires a description of the projected impact on employees of each company involved in the proposed transaction," and the DOC addressed "employee impact" in three of the four dockets cited by the Applicants as evidence that the DOC routinely addresses employee impact in its comments on acquisitions and mergers.

- 1) Docket No. 16-1016, Zayo's acquisition of Electric Lightwave- The DOC states on page 5 of its public comments that "[t]he Applicant have not engaged in any material integration planning, and no current plans exist with regard to Minnesota employees."
- 2) Docket No. 16-972, Windstream's acquisition of EarthLink- The DOC states on page 6 of its comments that "Windstream Parent and EarthLink are in the early stages of the integration process and have not made determinations regarding final employment levels of the combined company. EarthLink has two employees in Minnesota."
- 3) Docket No. 16-237, Verizon's acquisition of XO Communications- The DOC states on page 5 of its comments that "XO's Minnesota workforce totals fewer than 25 employees, and Verizon cannot predict the impact on Minnesota employees prior to the close of the Transaction. Although the Transaction is expected to strengthen Verizon's business and employ a wide variety of workers across its fifty-state footprint, including Minnesota, expected synergies will general include workforce adjustments, but the effect on

employees in any specific state is currently unknown.”

4) Docket No. 14-570, Level 3’s acquisition of tw telecom- In this docket the impact of the acquisition on employees was not specifically addressed. Rather, the DOC focused on the impact of the transaction on competition and states on page 5 of its comments that “[c]ompetition should not be significantly affected because Level 3 entities and tw telecom Minnesota are expected to become stronger competitors.”

The DOC considered the effects of mergers and acquisitions on employment for many years. For example, in the CenturyLink-Qwest merger in Docket 10-456 the Commission received a public comment that referred to the impact on employees when Windstream Corporation acquired Iowa Telecommunications, Inc., including the operations of Bishop Communications and Lakedale Telephone Company in Docket No. 09-1453. The public commenter who was a laid-off employee as a result of the Windstream acquisition stated that “close to 75% of employees” had been terminated . . . and well over 100 people had lost their jobs in Minnesota.” The public commenter urged the Commission to prevent layoffs and stated “a vote is coming up for Qwest to be acquired by CenturyLink” and urged the Commission to “make sure employees are protected.” The commenter closes with, “[w]e were not fortunate enough and now we are all going to be unemployed and would hate to see that happen again.” The DOC subsequently learned that only 50 out of 120 employees had jobs after the Windstream transaction closed. Please see Attachments 1 and 2 of the DOC’s supplemental comments. As a result, the DOC has generally made it a point to consider the impact of mergers and acquisitions on Minnesota employees.

Employment restrictions have previously been placed on CenturyLink. The Communications Workers of America’s (CWA), CenturyLink and Qwest agreed that some principles should guide the activities and employment levels of union-represented jobs following the merger of CenturyLink and Qwest. The Applicants may recall in CenturyLink’s merger with the Qwest operating companies in Docket No. 10-456 that the Office of Administrative Hearings in its Findings of Fact, Conclusions of Law, and Recommendation acknowledged the CWA and CenturyLink’s concern on employment levels. In its 10-456 Order, the Commission concurred with the Administrative Law Judge’s (ALJ’s) findings and conclusions and incorporated the relevant findings and conclusions, which includes the ALJ’s findings with regard to the CWA and CenturyLink Settlement.

The DOC has incorporated “the impact on employees” as one of the criteria it considers when evaluating mergers and acquisitions that impact local telecommunications operations for many years as stated in the DOC of Commerce website and Attachment 3 to the DOC’s May 5th comments.

In addition, The Applicants complain that the DOC’s use of the term, “customer-facing employee,” is undefined. The term, “customer-facing employee,” was first used in CenturyLink’s response to the DOC’s Information Request 3. The DOC provided the response as Attachment 4 to the DOC’s May 5th comments.

As such, the DOC indicated that it understands customer-facing employees as employees who review and approve customers' orders, maximize service reliability, identify and correct the source of any disruptions, avoid unintended route redundancy and minimize the need to hand off customer traffic thereby reducing failure points as defined by CenturyLink. The term, "customer-facing employees," as introduced by CenturyLink, is understood to generally refer to customer service employees who regularly interact with customers, and should be known to the Applicants. Finally, the Applicants argue that the condition to not involuntarily terminate customer-facing employees without Commission approval for two years from the date of the order in this docket undermines the benefits of the Transaction. If the termination of customer facing employees in Minnesota is a benefit of the Transaction, then the Commission should consider this potential impact as it determines whether the transaction is in the public interest.

Prohibiting involuntary staff reductions for a period of time is a condition set by other states. On January 24, 2017, the New York Public Service Commission stated in Verizon's acquisition of XO Holdings that there is a risk that post-close, as Verizon seeks to realize synergies, there will be a loss of critical jobs. The DOC believes its recommendation is more moderate than the action of the New York Commission. The New York Commission imposed a four year prohibition on lay-offs or any action effecting an involuntary reduction in the workforce of customer-facing jobs within XO Communications in New York State.

Most Favored Nation or State

In order to satisfy the public interest, the DOC recommends that commitments made in other jurisdictions for the approval of the Transaction may also be beneficial in Minnesota. As such, Petitioners should be required to agree to a most favored state clause. They should commit to any condition agreed to in other jurisdictions by notifying the Commission of the intent to provide the same benefits in Minnesota to obtain approval of the Transaction.

In CenturyLink's merger with Qwest operating companies in Docket No. 10-456, the ALJ from the Office of Administrative Hearings stated on paragraph 111 of her Findings of Fact, Conclusions of Law, and Recommendation that in the Settlement Agreement between the Joint Petitioners and Integra:

. . . if an order approving this transaction includes any condition and contained in the Agreement . . . , the Merged Company will make that condition or provision available to other carriers in that state upon request, to the extent applicable.

As previously indicated, the Commission concurred with the ALJ's findings and conclusions and incorporated the relevant findings and conclusions.

In the current merger Transaction with Level 3, Washington State reports a settlement with the Applicants whereby as described in the May 1, 2017 edition of Telecommunications Reports Daily. The DOC identified six merger conditions agreed to by the Washington Staff and the Applicants. Of the Six, the DOC believed that five of the six are applicable to the CenturyLink Level 3 Minnesota operations.

Another example of the DOC's recommendation and the Commission's acceptance of "most favored nation or state" language occurs in Docket 09-1453 when the DOC recommended:

If Windstream is required to make any concession in other jurisdiction[s] to obtain approval of this merger, it should be required to inform the Commission of the commitment and discuss how the same commitment may be applicable to exchanges served by Lakedale Telephone Company in Minnesota.

The DOC modified its recommendation for the "most favored nation or state" condition in response to the Petitioners' concern that commitments made in other jurisdiction may bear no relevance to Minnesota operations. The new condition would read:

Unless Petitioners can show good cause, they must commit to any condition agreed to in other jurisdictions that is applicable in Minnesota by notifying the Commission of the intent to provide the same benefits in Minnesota.

Modifying the condition should relieve the Petitioners of their concern that "conditions imposed by federal or even possibly foreign jurisdictions would be imported to Minnesota." The DOC has no interest in imposing requirements from other jurisdictions on the Applicants that have no bearing on Minnesota operations.

The DOC is recommending the following:

Approve the transfer of control of Level 3 Communications, LLC (Level 3), Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., WilTel Communications LLC, and Level 3 Telecom of Minnesota, LLC from Level 3 to CenturyLink, Inc. (CenturyLink).

- The proposed Transaction will have no impact on Commission authority. Each operating company will operate under existing certificates of authority and the combined company will continue to make the required jurisdictional annual and other regulatory reports.
- The Transaction is expected to be transparent to customers as it will not involve the transfer of customers. Although no requirement exists to notify customers, the Applicants agree to provide customer notice consistent with any process ordered by the Commission
- No tariff changes are expected at this time since the rates, terms and conditions of services currently provided by the Level 3 Companies to their customers will not change as a result of the Transaction.
- Applicants agree to file a notice of closing within 20 days of the completion of the Transaction.

- Petitioners should seek Commission approval for any action effecting an involuntary reduction in workforce, with the exception of retirement incentives, of customer-facing jobs for a period of two years from the date of the issuance of the Commission's order so that the existing level of customer service is maintained.
- Unless the Petitioners can show good cause, they must commit to any condition agreed to in other jurisdictions that is applicable in Minnesota by notifying the Commission of the intent to provide the same benefits in Minnesota.

CenturyLink/Level 3: The applicants (CenturyLink/Level 3) indicated that the DOC filed comments on the application and agreed that the Transaction satisfies the public interest considerations that the Commission has evaluated in past approvals of transfers under Minn. Stat. §§ 237.23 and 237.74, Subd. 12, including:

- Whether the post merger company will have the financial, technical and managerial resources to enable the companies to continue providing reliable, quality telecommunications services in Minnesota.
- What impact the Transaction will have on customers and competition.
- What impact the Transaction will have on Commission Authority.

The DOC's comments supported those public interest criteria, stating:

- The combined companies have the financial, managerial and technical resources to deliver reliable service;
- The proposed Transaction is expected to benefit enterprise customers by providing a fuller suite of services;
- The proposed Transaction does not impact the commission's authority and a list of compliance items have been addressed;
- The proposed Transaction benefits competition in the enterprise market.

The DOC was the only party to file comments in this proceeding. As such, the undisputed evidence demonstrates that this Transaction is in the public interest.

Most Favored Nation

The Applicants believe that the Commission should reject the most favored nations condition as unprecedented, unworkable and as imposing an unreasonable burden on the applicants. The most onerous condition suggested by the DOC is a "most favored nations" provision. The DOC provides little explanation of the need for this provision in light of the public interest benefits it identifies and fails to explain why such a condition is appropriate here. The DOC did not suggest a most favored nations condition in any of the recent transactions involving competitors in the enterprise market and did not make such a proposal in prior CenturyLink or Qwest merger proceedings.

The burden associated with such a condition is onerous. The Applicants operate in 50 states as well as a number of foreign jurisdictions. Their history in those locations and the concerns associated with them vary widely. For example, Colorado is the location of the headquarters of Level 3. Colorado may have unique concerns about the impact at that location, and those concerns may not translate to other states. The operational history of each company in each state is unique and particular concerns associated with particular states should bear no relevance to Minnesota's analysis. Applying conditions from other jurisdictions would be a complicated process and give rise to a number of potential disputes.

If the state commissions were to order a most favored nations condition, such a decision would make it extraordinarily difficult for any applicant to informally resolve issues with a regulator in any particular jurisdiction. Both the regulator and the Applicants would be required to try and analyze the financial impact, the potential scope of disputes and the practicalities of implementing any proposed resolution not only in the jurisdiction where the issue arose but also in every other jurisdiction with a most favored nations provision.

This concern increases geometrically with conditions ordered by a regulator, rather than voluntarily agreed upon. In such cases, both the applicant and the regulator will have to interpret the commission's order/condition in the context of that jurisdiction as well as the context of jurisdictions entirely unconnected with the original dispute. A most favored nations provision thus serves to undermine informal resolution of disputes and complicate implementation of any conditions that are ordered elsewhere.

The DOC's proposed condition seems to imply that conditions imposed by federal or even possibly foreign jurisdictions would be imported to Minnesota. Given all of these issues, the Commission should reject a most favored nations condition.

Commission Approval of Certain Workforce Reductions

With respect to the DOC's proposed restriction on involuntary workforce reductions is similarly problematic. The DOC fails to provide any explanation as to why such a restriction is appropriate here, when it was not even discussed in other transactions and fails to define crucial terms such as "customer-facing employee." Also, the DOC fails to describe whether the condition applies to all companies and whether it is attempting to impose the limitation on employees involved with

products regulated by the Minnesota Commission or for employees associated with all products, including products that do not involve telecommunications.

Even if the Commission were able to resolve all of the definitional issues associated with its proposed condition, adoption by the Commission would serve to undermine rather than enhance the public interest benefits the DOC identifies. A competitor is not as strong a competitor if it is unable to react to a change in the marketplace without going through a cumbersome review and approval process before adjusting its workforce. It becomes more difficult to make difficult financial and strategic decisions when a company needs to seek approval before reducing portions of its workforce or moving job functions from one state to another. It also makes it difficult to achieve the projected synergies that may include overlapping headcount in Minnesota, which could detract from the strength of the combined company.

The DOC's proposal seeks to limit reductions in workforce not only for the acquired company- Level 3 - but also for CenturyLink. It seems to tie those concerns to service quality. However, the service quality that the Commission is most concerned with- residential retail service quality- is not at issue in this Transaction. Level 3 does not serve such customers and the potential financial benefits identified by the DOC should undermine any claim that such a condition is needed.

CenturyLink's incumbent local exchange carriers ("ILECs") are not involved or impacted by the Transaction and therefore it is inappropriate to impose conditions on the ILECs. While the ILECs are not impacted by the Transaction, there are many other factors that can impact the number of customer-facing employees at the ILECs, including competition, reduction in customers, changes in how customers interface with the company and changes in technology. The Applicants need the flexibility to determine the appropriate staffing level, including customer-facing employees, to be competitive in the telecommunications marketplace.

In short, the DOC's proposed condition is poorly defined, not related to this Transaction and serves to undermine rather than enhance the public interest benefits identified by the DOC. This proposed condition should be rejected.

IV. Staff Discussion

Impact of Merger

It is important to remember what this merger does and does not do. It does not affect CenturyLink's ILEC operations. Nor does it impact residential customers. Level 3 serves large business customers.

According to the record in this proceeding, the Applicants have asserted that the combination of CenturyLink and Level 3 will result in a stronger competitor with enhanced customer service. According to the Applicants, the two companies' networks are for the most part complementary and Level 3 has a significant international presence. The companies have stated that this will

enable better coordination in serving enterprise customers with offices and connections worldwide. This transaction would not have taken place had it not been mutually beneficial to the companies.

Incidentally, the combined CenturyLink Level 3 will still only be the second largest enterprise network services provider next to AT&T¹. The Companies believe that the combination will enable them to compete against AT&T and other big cable companies. As such, consumers will have more and better choice and be better off.

With respect to direct financial and competitive aspects of the merger, the DOC provided its customary excellent analysis of merger transactions at pages 6- 16 of its initial comments. The Commission can be confident that this analysis provided is both thorough and accurate.

However, Staff has significant concerns regarding the with two of the conditions which the DOC recommends be attached to the transaction's approval.

The first is the following:

Petitioners shall seek Commission approval for any action effecting an involuntary reduction in workforce, with the exception of retirement incentives, of customer facing jobs for a period of two years from the date of the issuance of the Commission's order so that the existing level of customer service is maintained.

The second proposed condition is:

Unless the Petitioners can show good cause, they must commit to any condition agreed to in other jurisdictions that is applicable in Minnesota by notifying the Commission of the intent to provide the same benefits in Minnesota.

First Department Recommended Condition: Commission Approval of Certain Workforce Reductions

Regarding the first DOC condition, Staff agrees with the Applicants that the term "customer facing employees" lacks definition and such a condition compromises and encumbers the benefits of the transaction. There seems to be a fair amount of ambiguity introduced by this condition. The Department's May 5, 2017 comments in this docket point to a similar condition imposed by the New York Public Service Commission in a different merger (Verizon and XO), but do not explain why that Commission imposed that condition or what circumstances warrant applying it here.

¹ What CenturyLink and Level 3 Shareholders' Approval Mean for Their Merger, The Motley Fool Billy Duberstein March 28, 2017

As part of the CenturyLink/Qwest merger Docket No. P-421, et al./PA-10-456 and P-421, et al./PA-10-1012, CenturyLink and Qwest entered into an agreement with the Communications Workers of America and the International Brotherhood of Electrical Workers (Labor Unions) which addressed labor issues. This agreement placed conditions on Qwest /CenturyLink merger addressing such issues as human capital, workforce retention and severance, employee transfers, consultation and cooperation, organizing and collective bargaining, and unionized contractors. This agreement with the Labor Unions provided their conditional support for that merger.² The Labor Unions did not intervene in this proceeding.

Finally, taking a macro view of the transaction, the economy as a whole is dynamic. Transactions of this nature take place on a daily basis. The type of structural unemployment that the DOC's condition seeks to prevent occurs on a daily basis. Attempting to prevent it is almost denying the reality of its existence or inevitability. This ties back to the arguments put forth by the Applicants that the condition would make adjustments to the marketplace more difficult and places a limit on the combined companies' overall flexibility. It may portray a fundamental misunderstanding of the nature of this transaction.

Second Department Recommended Condition: Most Favored Nation

With respect to the second proposed DOC condition, as with the first proposed condition, it is not fully explained regarding what benefits it will provide in order to enhance the transaction. It was provided at the very end of the DOC's initial comments and is conceptual in nature.

When the condition was first proposed, the DOC did not know what any of the conditions that the other states would impose. As such, Staff is not clear whether the DOC would know if the conditions imposed by other states would be relevant to Minnesota or even counter to the current state of telecommunications regulation in the state of Minnesota.

In preparation for this proceeding, Staff performed an informal survey of the 14 former U S West/Qwest states. In the course of this survey Staff discovered that are 10 of those 14 states asserted no jurisdiction over this merger transaction.³

The remaining group of four states includes Colorado, Minnesota, Utah, and Washington. Of these states, Utah approved the merger transaction with no conditions on February 9, 2017.⁴ The

² See Commission Order Accepting Settlement Agreements and Approving Transfer of Control Subject to Conditions Docket No. P-421, et al./PA-10-456 and P-421, et al./PA-10-1012 March 31, 2011 pages 8 and 9.

³ These states include Arizona, Idaho, Iowa, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, and Wyoming.

⁴ Please see Utah Public Service Commission Order Approving Joint Application Docket No. 16-2206-01, 16-2246-01,16-2271-01, and 16-2351-02 February 9, 2017.

states of Colorado and Washington have not yet approved the merger transaction in their states. However, settlement agreements between the Applicants and the respective Commission Staffs have been filed in both states. Both of these Settlement Agreements contain a number of conditions for the merger approval.⁵ Staff points out that neither of these agreements contain a “most favored nation” (MFN) provision similar to that proposed by the DOC.

In the current Minnesota proceeding, it might be useful to view some telecommunications history. There have been two mergers directly involving the U S West/Qwest/CenturyLink entity in the last approximately 20 years. The first merger during that time was the merger between U S West, Inc. and Qwest Communications International, Inc., Docket No. P-3009, 3052, 5096,421,3017/PA-99-1192. At that time, U S West was one of the Regional Bell Operating Companies (RBOC) providing local service in 14 states, including Minnesota. In Minnesota, the Company served approximately 2.2 million residential and business (retail and wholesale) customers. U S West was headquartered in Denver. Qwest was a facilities based multimedia communications services firm, incorporated in Delaware and headquartered in Denver. This was a merger, which changed the face of the predominant RBOC and local exchange service provider in the State of Minnesota.

Approval of this merger contained many conditions. Conditions related to interconnection and interconnection agreements, overall service quality, advanced service, and wholesale service quality. However, even a merger of this magnitude did not include a MFN provision, which would adopt conditions approved and implemented in other states.⁶

The second merger was between Qwest Communications Company LLC and CenturyTel, Inc., Docket No. P-421, et al./PA-10-456 and P-421, et al./PA-10-1012. Going into this merger, Qwest was Minnesota's largest ILEC and Minnesota's Regional Bell Operating Company ("RBOC"). It served over 1.1 million access lines throughout the state. Qwest also was authorized to provide intrastate interexchange services; regulated retail and wholesale services; and interconnection services to CLECs through numerous interconnection agreements approved by the Commission.

CenturyLink was a publicly-traded Louisiana corporation with headquarters in Monroe, Louisiana. It served approximately 7 million access lines nationwide, 2.2 million broadband subscribers, and over 553,000 video subscribers. In Minnesota, CenturyLink provided regulated retail and wholesale services through the CenturyLink Operating Companies under the

⁵ Please see Washington Settlement Agreement between CenturyLink, Level 3, Commission Staff, and Public Counsel DOCKET NO. UT-170042 April 25, 2017. Also, Please see Colorado Settlement Agreement between CenturyLink, Level 3, Commission Staff, and Public Counsel DOCKET NO. UT-170042 May 4, 2017.

⁶ See Commission Order Accepting Settlement Agreements and Approving Merger Subject to Conditions Docket No. P-3009, 3052, 5096,421, 3017/PA-99-1192 June 28, 2000.

jurisdiction of the Commission; interconnection services to CLECs through numerous interconnection agreements approved by the Commission; fiber optic capacity to other carriers and to businesses; and retail interexchange service. This merger further changed the face of telecommunications in the state of Minnesota.

As with the earlier merger, approval of this merger contained many conditions. Conditions related to interconnection and interconnection agreements, operational support systems, overall service quality, infrastructure investment, billing systems, advanced service, wholesale and retail rates, and wholesale service quality. However, even a merger of this magnitude did not include a MFN provision, which would adopted conditions approved and implemented in other states.⁷

As a matter of fact, a similar proposed merger condition was made in the Qwest/CenturyLink merger docket in the context of adoption of interconnection agreements from another state. The Joint Wireless carriers proposed that a competitor should be able to take the terms of any interconnection agreement with Qwest from another state and use it to govern the competitor's interconnection with any of the merged company's affiliates in Minnesota. The Joint Wireless Carriers acknowledge that agreements from other states would need to be modified to conform to Minnesota-specific requirements, including Commission-approved prices. The Joint Wireless Carriers deny that the Commission would surrender jurisdiction if it were to permit competitors to opt into out-of-state interconnection agreements; the Commission would retain its opportunity to review – and potentially amend or reject – all interconnection agreements governing service in Minnesota. The Commission declined to adopt this proposal. The DOC took the following position on this proposed merger condition:

And the Department and the Joint Petitioners express concerns about the legal and practical problems that would arise from trying to conform an out-of-state interconnection agreement to state standards, and trying to interpret and enforce agreements initially drafted to the specifications of other states.....⁸

Staff has similar concerns regarding the imposition of a broad MFN for any and all merger conditions adopted in other states. As such, Staff believes that the Commission should be wary about adopting such a merger condition.

⁷ See Commission Order Accepting Settlement Agreements and Approving Transfer of Control Subject to Conditions Docket No. P-421, et al./PA-10-456 and P-421, et al./PA-10-1012 March 31, 2011.

⁸ See Commission Order Accepting Settlement Agreements and Approving Transfer of Control Subject to Conditions Docket No. P-421, et al./PA-10-456 and P-421, et al./PA-10-1012 March 31, 2011.

Also, Staff believes that such a condition could be viewed as a form of backdoor reregulation of CenturyLink. On April 20, 2017, the Commission approved a competitive market regulation for CenturyLink, Docket No. P-421/AM-16-496 and P-421/AM-16-547 pursuant to Minn. Stat. §237.025 (Competitive Market Regulation). CenturyLink is now subject to regulation as a CLEC. Some of the proposed conditions in the Washington proceeding⁹ would have the effect of imposing conditions similar to CenturyLink's previous AFOR, such as additional reporting. While the CLEC rules allow the Commission to take action with respect to a CLEC, it would typically do so if there were evidence of a problem first.

With the safeguards of the Competitive Market Regulation statute in mind, conditions approved in another state reflect the unique characteristics of that state. Those characteristics are not always easily transferable to another state. Staff maintains the concern that the adoption of conditions from other states may have unintended consequences once applied to Minnesota. As such, the Commission should be wary of adopting the MFN condition. If the Department has observed a condition imposed in another state proceeding, it could have recommended that specific condition.

Commission Review of Mergers, Acquisitions, and Transfers of Control

The dispute in this docket raises a fundamental question about the level of Commission review for transfers of control. Certainly, the Commission has the authority to impose certain conditions on transfers. However, staff's view is that conditions should be tied to a particular unresolved issue that affects the public interest. In this case, there have been no comments suggesting that the public interest is harmed by approving the transaction. If problems were to arise, whether or not they are related to approval of the transaction, interested parties can notify the Commission and the Commission can take action at that time.

V. Commission Options

1. Approve the transfer of control of Level 3 Communications, LLC (Level 3), Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., WilTel Communications LLC, and Level 3 Telecom of Minnesota, LLC from Level 3 to CenturyLink, Inc. (CenturyLink). Recognizing the following:
 - The proposed Transaction will have no impact on Commission authority. Each operating company will operate under existing certificates of

⁹ For instance, see page 7 of the Department's May 5, 2017 comments, noting that the Washington settlement requires reporting of maintenance expenses.

authority and the combined company will continue to make the required jurisdictional annual and other regulatory reports.

- The Transaction is expected to be transparent to customers as it will not involve the transfer of customers. Although no requirement exists to notify customers, the Applicants agree to provide customer notice consistent with any process ordered by the Commission
- No tariff changes are expected at this time since the rates, terms and conditions of services currently provided by the Level 3 Companies to their customers will not change as a result of the Transaction.
- Applicants agree to file a notice of closing within 20 days of the completion of the Transaction.

2. Approve the transfer of control of Level 3 Communications, LLC (Level 3), Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., WiTel Communications LLC, and Level 3 Telecom of Minnesota, LLC from Level 3 to CenturyLink, Inc. (CenturyLink). Recognizing the following:

- The proposed Transaction will have no impact on Commission authority. Each operating company will operate under existing certificates of authority and the combined company will continue to make the required jurisdictional annual and other regulatory reports.
- The Transaction is expected to be transparent to customers as it will not involve the transfer of customers. Although no requirement exists to notify customers, the Applicants agree to provide customer notice consistent with any process ordered by the Commission
- No tariff changes are expected at this time since the rates, terms and conditions of services currently provided by the Level 3 Companies to their customers will not change as a result of the Transaction.
- Applicants agree to file a notice of closing within 20 days of the completion of the Transaction.
- Petitioners shall seek Commission approval for any action effecting an involuntary reduction in workforce, with the exception of retirement incentives, of customerfacing jobs for a period of two years from the date

of the issuance of the Commission's order so that the existing level of customer service is maintained.

- Petitioners must commit to any condition agreed to in other jurisdictions by notifying the Commission of the intent to provide the same benefits in Minnesota.

3. Reject the application.

VII. Staff Recommendation

Staff recommends option #1.