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March 23, 2017

PUBLIC DOCUMENT

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101

RE: **PUBLIC Comments of the Minnesota Department of Commerce**
Docket No. P5733 *et al.* /PA-16-1062

Dear Mr. Wolf:

Attached are the **PUBLIC** comments of the Minnesota Department of Commerce in the following matter:

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

The filing was submitted on December 16, 2016 by:

Jason D. Topp
CenturyLink, Inc.
200 South 5th Street, Room 2200
Minneapolis, MN 55402

Pamela Hollick
Level 3 Communications, Inc.
Associate General Counsel
4625 W. 86th Street, Suite 500
Indianapolis, IN 46268

The Department recommends **approval** and is available to respond to any questions the Minnesota Public Utilities Commission may have on this matter.

Sincerely,

/s/ BRUCE L. LINSCHIED
Financial Analyst

/s/ BONNIE JOHNSON
Telecommunications Analyst

/s/ JOY GULLIKSON
Telecommunications Analyst

BLL/BJ/JG/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

PUBLIC COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCEDOCKET NO. P5733 *et al.* /PA-16-1062**I. BACKGROUND** (*The information in this section was taken from the Joint Application.*)

On December 16, 2016, the Minnesota Department of Commerce (Department) received a copy of 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), WiTel Communications LLC (WiTel), and Level 3 Telecom of Minnesota, LLC (Level 3 MN, and together, Level 3, Broadwing, GCLS, GCT, WiTel, and Level 3 MN, the Level 3 Companies) from Level 3 to CenturyLink, Inc. (CenturyLink) (the Transaction). Commission action is requested by mid-summer 2017 to permit completion of the Transaction by September 30, 2017.

On December 23, 2016, the Commission issued a notice announcing the deadline for filing comments on the Application. Initial comments were due February 21, 2017, and reply comments were due March 23, 2017.

On February 8, 2017, the Commission extended the comment period at the request of the Department to March 23, 2017, and reply comments are due on April 24, 2017.

A. APPLICANTS**1. 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.¹

Level 3 Companies, with certificates of authority to provide telecommunications services as telecommunications carriers in Minnesota, are:

¹ January 26, 2017 electronic reply from Level 3 in response to the Department's Information Request No. 7 asking what services Level 3 provides to Competitive Local Exchange Carriers in Minnesota that allow CLECs to compete with CenturyLink: "Level 3 Enhanced Local Service, Exhibit 8-1- Level 3 has been a VoIP leader since 1999, when we introduced the industry's first PSTN-quality VoIP service with no special dialing required Our Softswitch successfully supports more than 13 billion voice minutes per month for 5 billion calls."

- Level 3 Communications, LLC is a facilities-based common carrier and reseller of telephone services, including local exchange or local dial-tone services.
- Broadwing Communications, LLC is authorized to provide resold and facilities-based competitive local exchange and interexchange telecommunications services.
- Global Crossing Local Services, Inc. is authorized to provide local exchange telecommunications service.
- WiTel Communications, LLC is authorized to provide interexchange services.
- Level 3 Telecom of Minnesota, LLC is authorized to provide facilities-based local exchange telecommunications 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.

2. *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 following Minnesota operating subsidiaries (the CenturyLink Companies), all of which are authorized to provide local exchange and interexchange services:

- Qwest Corporation d/b/a CenturyLink QC;
- Embarq Minnesota, Inc. d/b/a CenturyLink;
- CenturyTel of Minnesota, Inc. d/b/a CenturyLink;
- CenturyTel of Chester, Inc. d/b/a CenturyLink; and
- CenturyTel of Northwest Wisconsin, LLC d/b/a CenturyLink

CenturyLink is also the parent of two companies certified as telecommunications carriers in Minnesota:

- CenturyLink Communications LLC is authorized to provide long distance and competitive local exchange services in Minnesota. It also provides facilities-based and resold interexchange and competitive local exchange operations throughout the United States except Alaska.
- CenturyLink Public Communications, Inc. offers competitive local exchange service limited to the provision of inmate calling services in Minnesota.

B. THE TRANSACTION

The October 31, 2016 Agreement and Plan of Merger (Merger Agreement) provides for the Level 3 Companies to become indirect, wholly owned subsidiaries of CenturyLink subject to the approval by the stockholders of Level 3, CenturyLink, and federal and state regulators. Upon the closing of the Transaction, CenturyLink shareholders will own approximately 51 percent, and Level 3 shareholders will own approximately 49 percent of the combined company. Applicants request approval of the indirect transfer of control of the Level 3 Companies from Level 3 to CenturyLink (see attached pre- and post-Transaction organization charts).

C. PUBLIC INTEREST

The Petitioners state that the proposed transaction is in the public interest because (i) the combined company will have the technical, managerial, and financial resources to enable customers of the CenturyLink and Level 3 Companies to continue providing reliable, quality telecommunications services in Minnesota; (ii) competition will be enhanced in the enterprise markets; (iii) the Transaction will not harm existing residential customers; and (iv) the Transaction will have no adverse impact on Commission authority.

II. STATEMENT OF ISSUES

- A. Does the proposed Transaction require Commission approval?
- B. Is the proposed Transaction in the public interest?
- C. Will the proposed Transaction have any adverse impact on Commission authority over the Applicants, and have the Applicants complied with other regulatory requirements that should be addressed as a result of the proposed Transaction?
- D. How will the proposed Transaction impact competition in the enterprise market?

III. LEGAL REFERENCES

Minn. Stat. § 237.23 states that it shall be unlawful for any telephone company, corporation, person, partnership, or association subject to the provisions of this chapter to purchase or acquire the property, capital stock, bonds, securities, or other obligations, or the franchises, rights, privileges, and immunities of any telephone company doing business within the state without first obtaining the consent of the commission thereto.

Minn. Stat. § 237.035(a) provides that telecommunications carriers are subject to regulation under this chapter only to the extent required under paragraphs (b) to (e). Minn. Stat. § 237.035(b) provides that telecommunications carriers shall comply with sections 237.121 (prohibited practices) and 237.74 (regulation of telecommunication carriers). Minn. Stat. § 237.035(c) states that telecommunications carriers shall comply with section 237.16, subd. 8 (local competition rules) and 9 (universal service fund requirements). Minn. Stat. § 237.035(d) states that to the extent a telecommunications carrier offers local service, it shall obtain a certificate under section 237.16 for that local service. Minn. Stat. § 237.035(e) provides that a telecommunications carrier's local service is subject to this chapter except that: (1) a telecommunications carrier is not subject to rate-of-return or earnings investigations under section 237.075 (rate change) and 237.081 (investigation), and (2) a telecommunications carrier is not subject to section 237.22 (depreciation, amortization).

Minn. Stat. § 237.74, Subd. 12 provides that no telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority.

Minn. Stat. § 237.16, subd. 4 states that no person shall acquire ownership or control of another telephone company either directly or indirectly, without first obtaining from the Commission an amended certificate of authority.

Minn. Stat. § 237.16, subd. 1(b) states that no person shall provide telephone service in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources to provide the proposed telephone services and a certificate of authority from the commission under terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules.

Minnesota Rule 7812.2210, subp. 16 also addresses mergers and acquisitions and states: "In accordance with Minnesota Statutes, section 237.74 [\fp2-cougar\stats\237\74.html](#), subdivision 12, before acquiring ownership or control of any provider of local service in Minnesota, either directly or indirectly, a CLEC must demonstrate to the commission that the present or future public convenience and necessity require or will require the acquisition. To

make this determination, a CLEC must show that the merger is consistent with the public interest, based on such factors as the potential impact of the merger on consumers, competition, rates, and service quality.”

The Commission's requirement that it receive notice regarding the assignment of interconnection agreements is documented in the docket, In the Matter of ASC, L.P. and U S WEST Communications, Inc. Under the Federal Telecommunications Act of 1996, Docket No. P421/EM-98-554, Order Rejecting Agreement and Directing Further Filing, June 22, 1998 at page 3.

Minn. Rule Part 7812.0550 contains the requirements for Commission approval of 911 Plans.

Minn. Stat. § 237.70, subd. 2 requires Telephone Assistance (TAP) reports from all local service providers that provide local exchange service.

Minn. Rule Part 7812.0600, subpart 1.B requires local service providers to provide 911 or enhanced 911 services.

IV. ANALYSIS

A. COMMISSION ACTION IS NEEDED FOR THE PROPOSED TRANSACTION

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.² 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.

Level 3 previously eliminated a holding company, and Applicants also now request any necessary approval for a *pro forma* change in Level 3's organization chart. A holding company previously existed between Global Crossing North American Holdings, Inc. (GCNAH) and two operating companies (Global Crossing Telecommunications, Inc. and Global Crossing Local Services, Inc., the Operating Companies.) See attached Pre- and Post-Merger Corporate Structures. No ultimate change in ownership or control occurred as a result of the organizational change, and the Operating Companies are not affected by the elimination of

² In the Matter of an Application for Approval of a Corporate Reorganization by Winstar Wireless, Inc., Docket No P5246/PA-00-925, August 25, 2000.

the holding company. Commission action is not required for the previous elimination of the intermediate holding company between GCNAH and the Operating Companies.³

B. THE PROPOSED TRANSFER OF CONTROL IS IN THE PUBLIC INTEREST

1. *The combined companies have the financial, managerial and technical resources to deliver reliable services*

The Applicants state that CenturyLink has extensive experience as a global communications, hosting, cloud, and IT services company, and the planned integration for this Transaction will combine the best managerial and technical talent from both companies to serve all of the combined company's market segments.

The Applicants calculated the impact of the combination in a *pro forma* financial statements showing:

- the condensed combined balance sheet of CenturyLink and Level 3 as of September 30, 2016,⁴
- the condensed combined statement of operations for the nine months ended September 30, 2016, and the year ended December 31, 2015.⁵

These calculations projected that the combined company would have a significant increase in long-term debt, a reduction in net income, and an increase in Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA).⁶

	CenturyLink	Level 3 (in millions) December 31, 2015	Combined
Long-term debt	\$18,184	\$10,875	\$37,732
Net income	\$878	\$3,433	\$3,231
EBITDA	\$5,842	\$1,825	\$13,586
Debt ratio	42%	44%	49%

Pro forma combined results for the nine months ended September 30, 2016 indicate reduced net income, but improved EBITDA:

	CenturyLink	Level 3 (in millions)	Combined
Net income	\$584	\$427	\$232
EBITDA	\$4,902	\$1,944	\$6,759
Net Debt to EBITDA	3.15	4.33	5.04

³ 2 *Id.*

⁴ CenturyLink SEC Form S-4, dated December 15, 2016 at 152-154.

⁵ 2 *Id.*

⁶ 3 *Id.*

Despite these indicators showing increased debt and reduced net income for the combined company, CenturyLink states that the combined company will have an improved financial profile when projected synergies and the impact of the Level 3 Net Operating Losses (NOLs) are recognized.

While the measurements listed above will be negatively impacted as of the merger date because of additional debt, the combined company's ability to repay debt will not be negatively impacted due to both usage of the NOLs to minimize income taxes and the projected synergies. The debt coverage measures above are calculated on a pretax basis and exclude the income tax and cash flow benefits of the Level 3 NOLs. The combined company can utilize up to \$1.9 billion in NOLs each year over the next five years to lower its cash income taxes. The Applicants believe that the combined company's strong cash flows will allow the company to de-lever the balance sheet over a reasonable period to pre-merger levels.⁷

In addition, analysis by financial advisors to the Applicants and projections for the years 2017 through 2021 indicates that the Applicants will experience stable or increasing revenues, EBITDA, and capital expenditures.⁸

Summary of CenturyLink forecasts prepared in August 2016

	2017(E)	2018(E)	2019(E)	2020(E)	2021(E)
			(in millions)		
Revenue	\$16,988	\$17,267	\$17,826	\$18,537	\$19,369
EBITDA	\$6,252	\$6,202	\$6,302	\$6,452	\$6,652
Capital Expenditures	\$3,100	\$2,900	\$2,900	\$2,601	\$2,600

Summary of Level 3's forecasts

	2017(E)	2018(E)	2019(E)	2020(E)	2021(E)
			(in millions)		
Revenue	\$8,437	\$8,831	\$9,249	\$9,683	\$10,137
EBITDA	\$2,877	\$3,092	\$3,323	\$3,566	\$3,794
Capital Expenditures	\$1,346	\$1,282	\$1,321	\$1,393	\$1,470

⁷ January 16, 2017 response by CenturyLink to the Department's January 4, 2017 Information Request 1 asking how the increased debt ratio and decline in repayment indicators in the December 15, 2016 SEC Form S-4 suggest an improved financial profile for the combined company.

⁸ *Op. cit.* Footnote 4 at 111 - 115.

Credit ratings for either Applicant are not significantly affected by the combination.

- Standard and Poor's (S&P) affirmed its 'BB' long-term corporate credit rating and 'B' short-term corporate credit rating, and the outlook is stable for CenturyLink.⁹ Similarly, S&P affirmed its 'BB+' rating on the senior secured debt of Level 3 and the 'B+' rating on the unsecured debt of Level 3, both with positive implications.¹⁰
- Moody's affirmed Level 3's credit rating with a lower, stable outlook; and it placed CenturyLink's ratings on downgrade review, and it will focus on leverage and cash flows at the combined entity, along with growth potential.¹¹
- Fitch Ratings placed CenturyLink on watch for a credit ratings downgrade as a result of its plans to acquire Level 3. The Negative Watch for CenturyLink issuer default rating reflects the increase in leverage pro forma for the Transaction and would potentially lead to a one-notch downgrade for CenturyLink to 'BB' and a Stable Outlook.¹²

2. *The proposed Transaction is expected to benefit enterprise customers by providing a "fuller suite of solutions."*

CenturyLink explained that while it has not yet developed specific plans or products, a comparison of the services offered by each company . . . through the acquisition of Level 3, CenturyLink's Ethernet footprint will greatly expand" in the U.S. and abroad, where CenturyLink has a relatively small Ethernet Presence.¹³

CenturyLink today offers customers a broad range of DSn [Digital Signal (level)] connections, particularly within its ILEC territory, but its roll-out of high capacity Ethernet services is more recent and it has not been as successful in selling Ethernet services as many of its competitors. Level 3, on the other hand, has a long history of providing innovative Ethernet services, but it lacks the same degree of fiber connectivity to buildings a CenturyLink. By combining forces, CenturyLink and Level 3 will be able to provide a more complete and fulsome array of connections and services to their customer base, positioning the combined company to compete more effectively

⁹ S&P Global Ratings, CenturyLink Inc. 'BB/B' Ratings Affirmed on Agreement to Acquire Level 3; Outlook Stable, October 31, 2016.

¹⁰ S&P Global Ratings, Level 3 Communications Inc. 'BB/B' Ratings Affirmed on Agreement to Acquire Level 3; Outlook Stable, October 31, 2016.

¹¹ Moody's affirms Level 3 credit ratings in wake of CenturyLink deal, <http://seekingalpha.com/news/3218878>, Jason Aycock, SA News Editor, October 31, 2016.

¹² Fitch Goes Negative on CenturyLink Due to Level 3 Deal, Amey Stone, <http://blogs.barrons.com/incomeinvesting/2016/10/31>.

¹³ January 16, 2017 response by CenturyLink to the Department's January 4, 2017 Information Request 5 asking to describe the "fuller suite of solutions" that will result from the proposed Transaction.

against those who already provide this array of service offerings to customers.¹⁴

For instance, the combined company expects to utilize Level 3's Adaptive Network Control service, which allows customers to dynamically scale bandwidth usage up or down to meet their specific needs without requiring extensive planning.¹⁵

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.¹⁶

The proposed Transaction is also expected to enhance the Applicants' network security and advanced threat intelligence services, which will serve to provide greater security for customers' data and systems. By reducing the need for customers to develop, deploy and maintain their own security technology, the combined company's security service offerings will provide customers with an administratively easy and cost-efficient way to prepare for and manage their cybersecurity issues.¹⁷

3. *The proposed Transaction is expected to bring additional positive benefits to the economies of the Applicant's enterprise customers*

The proposed Transaction will enable the Applicants to combine their complementary networks to offer customers of enterprise services a broader range of on-net services than they currently can obtain from the Applicants individually.¹⁸ The proposed Transaction is expected to reduce both Applicants' dependence on leased fiber facilities.¹⁹ The combination is also expected to enhance the combined company's financial profile, strengthen its ability to invest and compete for the long term.²⁰

CenturyLink states that a stronger, more effective competitor with a fuller suite of service offerings in the enterprise market should have better ability to positively impact the state and local economies in Minnesota and nationally. The combined companies' impact is expected to come not only through its own employment but also through its use of suppliers, contractors and other vendors, and enterprise customers should receive a broader array of

¹⁴ 2 *Id.*

¹⁵ 3 *Id.*

¹⁶ 4 *Id.*

¹⁷ 5 *Id.*

¹⁸ January 16, 2017 response by CenturyLink to the Department's January 4, 2017 Information Request 6 asking the impact of the proposed Transaction on state and local economies and particularly, how will the Transaction impact MN employment of CenturyLink and Level 3.

¹⁹ *Id.* 2.

²⁰ *Id.* 3.

services, although CenturyLink does not have an estimate of the impact of the Transaction, if any, on the Minnesota based employment of CenturyLink or Level 3.²¹

The proposed Transaction should be in the public interest. Despite the initial increased debt of the Applicants, projected synergies and NOLs are expected to minimize cash income taxes and increase cash flow to de-lever the balance sheet to pre-merger levels.²²

Estimates of the Applicants' financial performances and investment activities through 2021 suggest that the Transaction will not threaten reliable services from the Applicants.²³ Credit ratings do not deteriorate as a result of the Transaction, although caution is expressed regarding the credit outlook.²⁴ Enterprise customers are expected to be offered a wider array of services to better compete to the benefit of state and local economies.

C. *THE PROPOSED TRANSACTION DOES NOT IMPACT THE COMMISSION'S AUTHORITY OVER THE APPLICANTS, AND THE FOLLOWING COMPLIANCE ITEMS HAVE BEEN ADDRESSED*

- The Merger Agreement was executed on October 31, 2016, and the Application was filed on December 16, 2016. Commission action is requested no later than midsummer 2017, and the Applicants seek to complete the proposed Transaction as soon as possible and prior to the expected closing of September 30, 2017. The Merger Agreement requires that the Petitioners obtain regulatory approvals prior to closing the Transaction.²⁵ The Petitioners do not plan to close the transaction without Commission approval, and no violation of Minn. Stat. §§ 237.23 or 237.74, subd. 12 is expected to occur.
- The proposed Transaction will have no impact on Commission authority. Each operating company will operate under existing certificates of authority.
- The assumption or transfer of any NXX codes is not expected.
- The combined company will continue to make the required jurisdictional annual 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 will 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.
- Minn. Stat. § 237.70, subd. 2 requires Telephone Assistance Plan (TAP) reports from all local service providers that provide local exchange service. No residential

²¹ *Id.* 4.

²² *Op cit.* Footnote 7,

²³ *Op cit.* Footnote 8.

²⁴ *Op cit.* Footnotes 9, 10, 11 and 12.

²⁵ Application, Exhibit B- Agreement and Plan of Merger, US SEC Form 8-K, CenturyLink, Inc., October 31, 2016, Exhibit 2.1- Article 8.1(c).

customers are being transferred, and the proposed Transaction will not affect TAP customers. The CenturyLink companies are current on their TAP filings, and Level 3 files a consolidated report for the Level 3 Companies' TAM, TAP and 911 filings in Minnesota.²⁶

- The requirement to notify the Commission regarding the assignment of interconnection agreements is not required. The Commission's 60-day notice requirement for the assignment of interconnection agreements does not apply to the proposed Transaction because the proposed Transaction is a transfer of control of companies that retain their certificates of authority, interconnection agreements and operations. No Competitive Local Exchange Carriers (CLECs) have intervened in this docket. However, if any CLEC provides comments with concerns, interconnection compliance requirements may need to be imposed.
- The need to seek 911 approvals regarding the proposed Transaction is not anticipated. Applicants generally must inform the Minnesota Department of Public Safety (DPS) and the Metropolitan Emergency Services Board (MESB) to coordinate any required changes to affected 911 Plans if the proposed transfers will result in a network change or any change to a county 911 Plan for customers. No new 911 approvals are anticipated as a result of the proposed Transaction.

D. THE PROPOSED TRANSACTION BENEFITS COMPETITION IN THE ENTERPRISE MARKET

1. *Concern has been expressed that competitors decline by one as a result of the Transaction*

The number of independent competitors declines by one as control of Level 3 transfers to CenturyLink. Core Communications, Inc. (Core), a Pennsylvania CLEC, expressed the concern that once the transfer of control is complete, it is likely that CenturyLink will eliminate Level 3's competitive transport offerings, or at least their availability to wholesale carrier customers, and attempt to impose its special access offerings on CLECs thereby restricting competitors' ability to transport traffic on an economical basis.²⁷ Core is also concerned that the Transaction "will result in functional difficulties for competitors (for example, increased paperwork and contractual burdens) seeking to order transport services and seeking interconnection."²⁸

CenturyLink responded to Core's Pennsylvania protest by saying that its ILEC affiliate in Pennsylvania today offers transport services under an interconnection agreement with Core at lawful and reasonable TELRIC-based rates for traffic types described in the interconnection agreement. To the extent that Core views CenturyLink's TELRIC-based transport rates as otherwise, Core has avenues for relief and remedies available to Core,

²⁶ February 9, 2017 reply to the Department Information Request No. 9 requesting information regarding the filing of TAP reports by certain Level 3 Companies.

²⁷ *Joint Application for the Transfer of Control of Level 3 Communications, Inc., Et al. to Transferee, CenturyLink, Inc.* Docket Nos. A-2016-2580274 – A2016-2580281, January 17, 2017, Core Communications, Inc.'s Protest and Petition to Intervene, par. 9, at 3.

²⁸ 2 *Id.* para. 14, at 4.

including the ability to exercise rights under Sections 251 and 252 of the 1996 Telecommunications Act.²⁹

CenturyLink further states that “Core’s competitive options likely include other transport providers and include self-provisioning of ‘transport links’ to access ‘the tandems and central offices of CenturyLink’ or ‘the offices of other LECs and other types of carriers.’”³⁰ CenturyLink added that:

the [T]ransaction will have no effect on either CenturyLink’s or Level 3’s contractual and regulatory obligations to their respective customers. [It] will not alter the rates, terms, and conditions of service under customers’ current contracts. CenturyLink and Level 3 will continue after the merger to abide by their ongoing obligations under existing agreements and contracts. There is no change in services or rates as a result of the Transaction.³¹

INCOMPAS, the Internet and Competitive Networks Association advocating for competition policy across all networks, filed comments with the Federal Communications Commission (FCC) in the matter of the Applicants’ application to transfer control of Level 3 to CenturyLink.³² INCOMPAS argues that the FCC must ensure that the competitive force of Level 3 is not lost.³³ Citing proceedings at the FCC that demonstrate the critical need for an increase in the number of competitors for enterprise services, namely dedicated business data services, INCOMPAS stated that virtually no commercial buildings are subject to significant actual dedicated business data services competition.³⁴ INCOMPAS concluded that the FCC must critically assess the impact this transaction will have on business data services customers as the Applicants propose to eliminate a business data services competitor.³⁵ Specifically, INCOMPAS asked the FCC to require that CenturyLink and Level 3 disclose overlap data for any buildings where they offer carriers the opportunity to buy wholesale fiber-based Ethernet at lit building rates.³⁶

The Applicants replied to the comments of INCOMPAS by stating that its updated assessment demonstrates that, at most, 80 buildings within CenturyLink’s ILEC region would go from having two competitors to one without a fiber-based competitor within specified distances spread across 23 Metropolitan Statistical Areas (MSAs), which would not

²⁹ *Joint Application for the Transfer of Control of Level 3 Communications, Inc., et al. to Transferee, CenturyLink, Inc.* Docket Nos. A-2016-2580274 – A2016-2580281, February 3, 2017, CenturyLink’s Answer to Core Communications, Inc.’s Protest and Petition to Intervene, para. 8, at 4.

³⁰ *2 Id.* para 7, at 3.

³¹ *3 Id.* para 11, at 5.

³² Before the FCC, In the Matter of Level 3 Communications, Inc. and CenturyLink, Inc. Consolidated Application for Transfer of Control, WC Docket No. 16-403, Comments of Incompas, January 23, 2017.

³³ *2 Id.* at 3.

³⁴ *3 Id.* at 5.

³⁵ *4 Id.* at 6.

³⁶ *5 Id.* at 8.

be competitively significant.³⁷ Subsequent response to discovery by CenturyLink reveals that the count of buildings that would go from two carriers to one has been reduced from 80. Based on current information and methodology, there are no buildings in Minnesota that would go from two carriers (CenturyLink and Level 3) to one.³⁸

Frontier expressed concern that CenturyLink's proposed acquisition of Level 3 could hinder rural broadband investment.³⁹ Frontier's key concern is that Level 3 has not been paying its network interconnection fees in a timely manner.⁴⁰ The Applicants have to rent facilities from other local providers like Frontier outside of their footprints. Frontier has agreements with Level 3 and CenturyLink for high-capacity data services, including internet backbone transmission. Frontier claims that Level 3 has either been refusing to pay or delaying payment for wholesale services. According to Frontier's records, Level 3 is over 90 days behind in payment for millions of dollars in rendered services. In order to continue funding its rural broadband expansion efforts, Frontier states it must be paid on time from larger wholesale carrier customers.⁴¹

In response to Department discovery, Level 3 argues that this docket is not the appropriate forum for Frontier to address any claim that Level 3 owes it money, and Frontier should seek legal recourse to address financial disputes.⁴² Level 3 also countered that it contacted Frontier to discuss Frontier's allegations. Level 3 stated that Frontier's collection problems have been due to Frontier's lack of engagement in resolving billing issues and delays in crediting Level 3 for what has been proven to be invalid billings. Level 3 filed disputes on approximately 4.9% of Frontier's invoicing during the 2016 calendar year, and over 70% of its resolved disputes resulted in credits from Frontier for overbillings paid by Level 3.⁴³

2. *The Transaction produces a stronger competitor*

Despite the elimination of an independent competitor, the proposed Transaction is expected to enhance the Applicants' combined network facilities, bolstering the combined company's ability to compete for multi-location customers who prefer providers that are able to offer on-net access on a national or global scale.⁴⁴

³⁷ *Op. cit.* Footnote 32, Joint Reply Comments of CenturyLink, Inc. and Level 3 Communications, Inc. February 7, 2017 at i.

³⁸ March 16, 2017 reply from CenturyLink in response to the Department's March 6 Information Request 10 asking CenturyLink to identify any of the 80 buildings across 23 MSAs that overlap or go from two carriers to one carrier and are located in Minnesota.

³⁹ *Op.cit.* Footnote 32, Reply Comments of Frontier Communications Corporation, February 7, 2017 at 3.

⁴⁰ 2 *Id.*

⁴¹ 3 *Id.*

⁴² March 16, 2017 reply from CenturyLink in response to the Department's March 6 Information Request 11 asking Level 3 to respond to Frontier's statement that Level 3 has not been paying its network interconnection fees in a timely manner.

⁴³ 2 *Id.*

⁴⁴ January 17, 2017 response to IR 3 asking how competition for enterprise customers will improve if the number of independent competitors declines by one as control of Level 3 goes to CenturyLink.

CenturyLink states that by increasing the number of its on-net end user connections, the combined company will be able to reduce off-net access costs to the benefit of customers.

The combined company's expanded reach will enable the company to serve a higher proportion of locations using its own end user connections, thus making the company a stronger competitor in the enterprise market when compared with larger, highly capitalized providers with greater reach such as AT&T, Verizon, and cable companies such as Comcast. By increasing the number of its on-net end user connections, the combined company will be able to reduce its off-net access costs.⁴⁵

[HIGHLY SENSITIVE TRADE SECRET NON-PUBLIC INFORMATION HAS BEEN EXCISED]

The Transaction should provide better quality control for customers. As the FCC recently recognized in the context of its review of the Verizon-XO transaction, it generally is better to serve customers with on-net facilities for a variety of reasons, including better responsiveness to service problems and greater control over the end-to-end arrangement to ensure that those service problems do not occur in the first place.⁴⁶ By enabling the Applicants to reduce their dependence on leased fiber, the Transaction will enable the combined company to provide these types of benefits to its customers.⁴⁷

The Transaction is expected to improve the ability of the Applicants to serve multi-location customers. CenturyLink states that "multi-location customers . . . are likely to prefer service providers that can provide an on-net presence for their national and, where applicable, international locations.⁴⁸ CenturyLink further states that the FCC confirmed the "planned use of . . . fiber facilities to better compete for multi-location customers as a significant public benefit.⁴⁹

CenturyLink states that there are many customer-facing benefits of owning fiber that the FCC found to be specific and identifiable public interest benefits that result from one service provider acquiring a fiber-based provider.⁵⁰ Owning more of its own fiber means the combined company will have the following advantages:

- more complete information about the capacity and other characteristics of the specific network facilities used to serve each customer,
- greater authority to monitor and manage the provision and maintenance of these facilities on the company's own schedule, with less need to rely on and coordinate with third parties,

⁴⁵ 2 *Id.*

⁴⁶ *Op. cit.* Footnote 44, Footnote 1, Memorandum Opinion and Order, DA 16-1281, WC Docket No. 16-70, at ¶ 63, rel. Nov. 16, 2016.

⁴⁷ 2 *Id.*

⁴⁸ 3 *Id.*

⁴⁹ 4 *Id.*

⁵⁰ 5 *Id.*

- a better position to maximize service reliability by more rapidly, identifying and correcting the source of any disruptions,
- avoiding unintended route redundancy by gaining visibility into path usage, and
- minimizing the need to hand off customers' traffic to other networks, thereby reducing failure points in the system.⁵¹

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, with the exception of retirement incentives, 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 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.⁵² 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.⁵³ 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.⁵⁴ Although CenturyLink has one of the largest Multiprotocol Label Switching VPN networks in the country, it has a comparatively smaller footprint internationally than Level 3's IP VPN services.⁵⁵ By combining resources, the Applicants expect to better provide their customers with a broader array of these services.

The proposed Transaction is also expected to enhance the Applicants' network security and advanced threat intelligence services, which will provide greater security for customers' data and systems.

The combined company is expected to have security services with adaptive intelligence, threat prevention, threat management, incident response and analysis services to support customers' hosted or on-premises enterprise security programs and enable customers to react quickly to security

⁵¹ 6 *Id.*

⁵² 7 *Id.* Footnote 4, Vertical Systems Group, an independent research company that focuses on business data network services, Mid-Year 2016 U.S. Carrier Ethernet LEADERBOARD, Vertical Systems Group (Aug 18,2016). Leaderboards are the industry's foremost benchmarks for measuring Ethernet Service Provider market presence based on billable retail port installations. CenturyLink moved from fourth to fifth on the Leaderboard.

⁵³ *Op cit.* Footnote 13

⁵⁴ 2 *Id.*

⁵⁵ 3 *Id.*

incidents with data-driven plans and support from expert security staff.⁵⁶

The Applicants plan to combine the best aspects of their respective security and intelligence services to enable customers to better protect their data and systems and reduce the need for customers to develop, deploy and maintain their own security technology and manage their cybersecurity issues.⁵⁷

Finally, to satisfy the public interest, commitments made in other jurisdictions for the approval of the Transaction may also be beneficial in Minnesota. 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.

V. COMMISSION ALTERNATIVES

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., WiTel 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 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.
 - 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.

⁵⁶ 4 *Id.*

⁵⁷ 5 *Id.*

2. Approve the Application with alternative modifications.
3. Reject the Application.

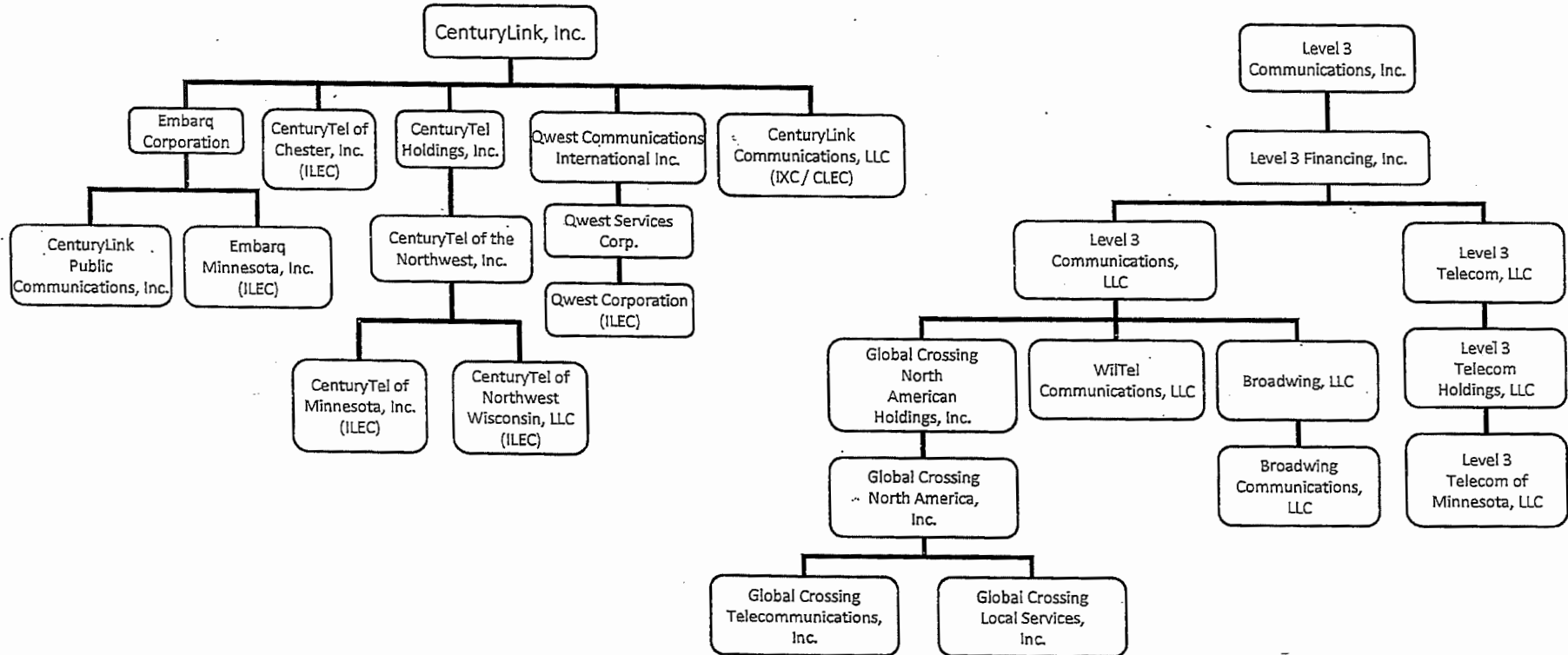
VI. RECOMMENDATION

Based on its review to date, the Department recommends that the Commission adopt Alternative 1.

The Department will review any other initial comments that may be filed in this proceeding and anticipates submitting a final recommendation to the Commission in reply comments due on April 24, 2017.

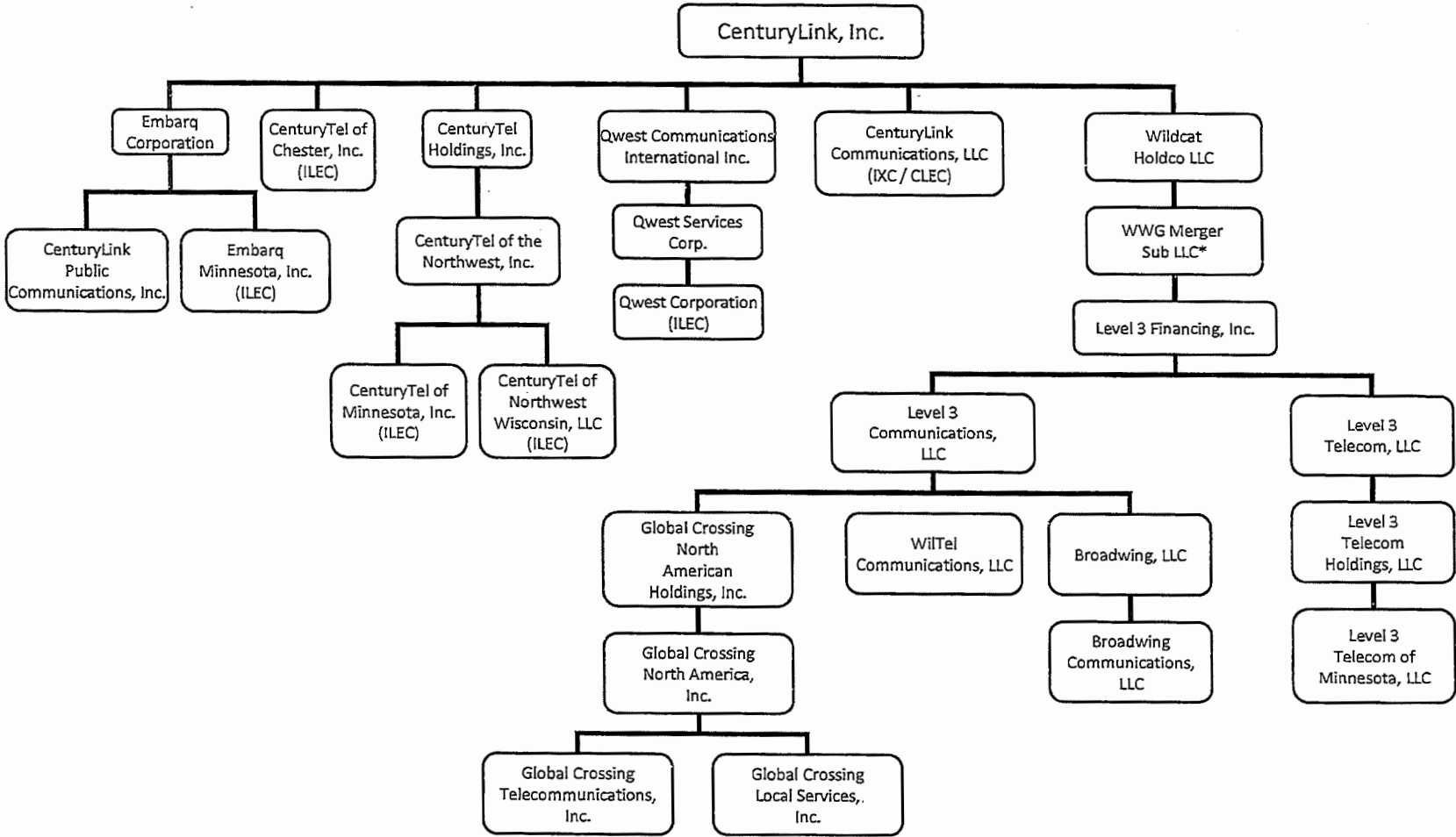
MINNESOTA EXHIBIT A

Pre-Merger Corporate Structure



MINNESOTA EXHIBIT A

Post-Merger Corporate Structure



*Surviving entity after merging with Level 3 Communications, Inc.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Public Comments**

Docket No. P5733, 6236, 5442, 437, 5708, 5981, 421, 430, 551, 509, 563, 5096, 6939/PA-16-1062 and P5733, 6236, 5442, 437, 5708, 5981, 421, 430, 551, 509, 563, 5096, 6939/M-17-74

Dated this 23rd day of March 2017

/s/Sharon Ferguson

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