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April 24, 2017

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

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

Dear Mr. Wolf:

Enclosed for filing are the Reply Comments of the Joint Applicants regarding the above-referenced matter.

Very truly yours,

/s/ Jason D. Topp

Jason D. Topp

JDT/bardm

Enclosure

cc: Service List

200 South 5th Street, Room 2200
Minneapolis, MN 55402

www.centurylink.com

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

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuenger	Commissioner
Katie Sieben	Commissioner
John A. Tuma	Commissioner

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Dianne Barthel hereby certifies that on the 24th day of April, 2017, she e-filed a true and correct copy of the Reply Comments of Joint Applicants by posting it on www.edockets.state.mn.us. Said document was also served on the service list via U.S. mail and e-mail as designated with the Minnesota Public Utilities Commission.

/s/ Dianne Barthel _____
Dianne Barthel

Subscribed and sworn to before me
this 24th day of April, 2017.

/s/ LeAnn M. Cammarata _____
Notary Public

My Commission Expires Jan 31, 2020

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REPLY COMMENTS OF JOINT APPLICANTS

On December 16, 2016, Level 3 Communications, Inc. (“Level 3”), and CenturyLink, Inc. (“CenturyLink” and together with Level 3, the “Applicants”), filed a petition requesting Commission consent to the proposed indirect transfer of control of Level 3 Communications, LLC, Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., WilTel Communications LLC, and Level 3 Telecom of Minnesota, LLC (“Level 3 Companies”) from Level 3 to CenturyLink (the “Transaction”).¹

The only entity submitting comments was the Department of Commerce (“Department”). The Department filed comments listing the numerous reasons why the Transaction is in the public interest and should be approved. Despite concluding the Transaction is in the public interest, the Department proposed two unique conditions that have not been imposed in other merger applications approved by the Commission:

- 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.

¹ Level 3 and CenturyLink have filed this Joint Application in their sole and limited capacity as parties to the proposed Transaction and not as regulated entities in Minnesota.

- 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.

The Applicants appreciate the Department's recognition of the public interest benefits of the Transaction. The Applicants disagree, however, with these two proposed conditions. If imposed, these conditions would serve to undermine, rather than enhance, the public interest benefits the Department has recognized. The proposed conditions are poorly defined and could lead to regulation of products outside the jurisdiction of the Commission and impose restrictions on locations beyond the Commission's authority. The proposed conditions, in part, do not appear to relate to the Transaction and would amount to treating the Applicants very differently than the Commission has recently treated similar transactions involving competitors in the enterprise market. For these reasons, the Commission should reject the two additional conditions proposed by the Department and issue an order consistent with the Commission's decisions in other similar transactions.

I. The Department's Comments Recognize That This Transaction Is In The Public Interest.

On March 23, 2017, the Department 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 Department's comments supported those public interest criteria, stating:

- The combined companies have the financial, managerial and technical resources to deliver reliable service;²
- The proposed Transaction is expected to benefit enterprise customers by providing a fuller suite of services;³
- The proposed Transaction does not impact the commission's authority and a list of compliance items have been addressed;⁴
- The proposed Transaction benefits competition in the enterprise market.⁵

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

II. The Department's Proposed Unique Conditions Should Be Rejected.

Despite the public interest benefits it recognizes, and the uncontroverted evidence that the Transaction meets the statutory requirements for a public interest finding, the Department recommends that the Commission impose two unique conditions in this proceeding. It suggests a condition requiring that "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."⁶ It further suggests that the Applicants "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."⁷ The Applicants respectfully request that the Commission reject these suggestions.

² Department Comments, 6-8.

³ Department Comments, 8-10.

⁴ Department Comments, 10-11.

⁵ Department Comments, 11-16.

⁶ Department Comments, 17.

⁷ Department Comments, 17.

A. Neither Condition Is Necessary For The Commission To Find This Transaction Is In The Public Interest.

While the Applicants have specific concerns with each proposed condition, the Commission should first consider the inconsistency between the analysis of the Department and the recommended conditions. The Department proposes these two conditions with almost no discussion. In light of the many public interest benefits it identifies associated with this Transaction, the Department has made no showing that these conditions are necessary for the Commission to find the Transaction as in the public interest.

Because the Transaction benefits the state of Minnesota in terms of the financial strength of the combined company and its strength as a competitor in the enterprise market, it makes no sense to impose conditions that could potentially undermine those benefits. Consequently, it would be arbitrary for the Commission to undermine the public interest benefits of the Transaction by (1) requiring the Applicants to seek approval for changes to its workforce, thereby slowing down its ability to respond to the competitive marketplace and (2) requiring the Applicants to agree in advance to conditions that might be imposed by regulators in other jurisdictions, with different statutory standards and with different state-specific considerations.

B. The Department's Recommendations Are At Odds With Its Recommendations And Commission Orders In Four Separate Transactions Involving Competitors In The Enterprise Market.

Within the last three years, this Commission has reviewed a number of similar transactions involving competitors in the enterprise market.

Zayo/Electric Lightwave involved companies that compete with Level 3 and CenturyLink for business data services customers and involved a similar combination of

infrastructure.⁸ Windstream's acquisition of EarthLink was another example of a transaction involving similar issues as the present. The November 6, 2016 announcement of the transaction indicates:

The combined company will have increased scale and scope giving it the ability to leverage best practices across a broader platform, and offer customers expanded products, services and enhanced enterprise solutions. The combination will result in an extensive national footprint spanning approximately 145,000 fiber route miles and provide advanced network connectivity, managed services, voice, internet and other value-added services. Customers will also benefit from combining Windstream's scale in the Enterprise segment and EarthLink's successful launch of SD-WAN.⁹

Verizon's acquisition of XO is yet another example:

The XO acquisition fulfills multiple needs for Verizon. For one, the provider can bring its network services like Ethernet to more of its enterprise and wholesale customers. Also, Verizon gains metro networks in 40 major U.S. markets with over 4,000 on-net buildings and 1.2 million fiber miles.¹⁰

Level 3's acquisition of tw telecom provides a fourth example of a similar transaction.

Level 3 described the benefits of the transaction as follows:

- Enables a higher quality and more reliable on-net experience for customers doing business in North America or expanding into North America from regions such as Europe, Middle East and Africa (EMEA) and Latin America, including access to triple the number of on-net buildings.
- Provides access to the combined product portfolio, targeted at helping companies manage their growth in an efficient and secure manner.
- Addresses the ever-changing threat landscape—both companies built their networks with security and flexibility in mind.
- Boosts Level 3's enterprise revenue in North America from approximately 65 percent to 70 percent of the region's total revenue.
- Doubles the company's salesforce in North America to provide excellent customer service and reach.¹¹

⁸ <http://www.zayo.com/news/zayo-acquire-electric-lightwave/>.

⁹ http://news.windstream.com/article_display.cfm?article_id=1770.

¹⁰ <http://www.fiercetelecom.com/telecom/after-delay-verizon-wraps-1-8b-xo-acquisition-deepens-metro-fiber-density-45-markets>.

¹¹ <http://investors.level3.com/investor-relations/press-releases/press-release-details/2014/Level-3-Completes-Acquisition-of-tw-telecom/default.aspx>.

The Minnesota Commission reviewed each of these transactions. In each case, the Department recommended approval with conditions requiring that (1) regulatory fees be paid, (2) the applicants file notice of completion after the transaction is commenced, and (3) that 911 issues be addressed.¹² The Department also issued its recommendations within a very short time period and, in each case, the Commission issued a consent order consistent with the Department's recommendations within 76 days of the date of the application. Two of the applications were filed nearly contemporaneously with this application yet those proceedings have been completed.

Minnesota Statute § 237.011 directs this Commission to consider the goal of “encouraging fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner.” The Department's recommendations in this case contravene this directive by (1) imposing burdensome and ill-defined conditions on the transaction which it did not even consider for competitors; (2) delaying the process long beyond the time period it took to consider contemporaneous transactions; and (3) failing to provide any explanation for conditions that are flatly contradicted by its analysis of the public interest benefits of this Transaction. Parity alone mandates that the Department's suggestions be rejected.

C. 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 Department is a “most favored nations” provision. The Department 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

¹² See Attachment A for the ordering clauses in each proceeding.

appropriate here.¹³ The Department 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

¹³ The Transaction has already been approved or obtained regulatory clearance in 18 states without imposing any conditions.

nations provision thus serves to undermine informal resolution of disputes and complicate implementation of any conditions that are ordered elsewhere.

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

D. The Commission Should Reject The Department's Proposal Related To The Number Of Customer Facing Employees.

The Department's proposed restriction on involuntary workforce reductions is similarly problematic. The Department fails to provide any explanation as to why such a restriction is appropriate here, when it was not even discussed in other transactions¹⁴ and fails to define crucial terms such as "customer-facing employee." Also, the Department 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 Department 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

¹⁴ See e.g., *In the Matter of the Joint Application of Electric Lightwave Parent, Inc., Electric Lightwave, LLC, Eschelon Telecom of Minnesota, Inc., Integra Telecom of Minnesota, Inc., Scott-Rice Telephone Company, and Zayo Group, LLC for Approval to Transfer Indirect Control of Licenses to Zayo Group, LLC*, Docket No. P-6854, 5423, 5340, 426/PA-16-1016, and the ordering clauses quoted in Attachment A.

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 Department'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 Department 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 Department'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 Department. This proposed condition should be rejected.

CONCLUSION

The comments filed by the Department demonstrate the public interest benefits associated with this Transaction. Those benefits demonstrate that the additional conditions the Department has proposed are unnecessary, unprecedented and unwarranted. If the Commission were to adopt the Department's proposed conditions, it would be placing its thumb on the scale in the highly competitive enterprise telecommunications market. Such an approach flatly contradicts the considerations the legislature has provided to the Commission when taking regulatory action. The Applicants respectfully request that the Commission approve the Transaction and reject the additional conditions suggested by the Department.

Dated this 24th day of April, 2017.

CENTURYLINK, INC.

/s/ Jason D. Topp _____

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LEVEL 3 COMMUNICATIONS, INC.

/s/ Pamela Hollick _____

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ATTACHMENT A

COMMISSION DECISIONS ON OTHER MERGERS IMPACTING THE MINNESOTA ENTERPRISE MARKET

EarthLink/Windstream – February 7, 2017 (76 Days – consent order)

Approved the indirect transfer of control of Business Telecom, LLC, CTC Communications Corp., DeltaCom, LLC, EarthLink Business, LLC (together, the EarthLink Transferees) from EarthLink Holdings Corp. to Windstream Holdings, Inc. (Windstream Parent).

- The EarthLink Transferees are responsible for their respective regulatory filings and fees.
- Applicants must file a notice of completion within 20 days of the completion of the Transfer.
- Windstream Parent must notify the Commission of the final structure, including the identity and corporate form of the newly formed subsidiary with the notice of completion.
- The EarthLink Transferees must contact the appropriate 911 agency if any changes occur to their 911 Plan as a result of the transfer.
- Name change requests must be filed if Windstream Parent changes the names of the EarthLink Transferees.

In the Matter of the Joint Application for Approval to Transfer Control of Business Telecom, LLC, CTC Communications Corp., DeltaCom, LLC, and EarthLink Business, LLC from EarthLink Holdings Corp. to Windstream Holdings, Inc., and the Subsequent Internal Reorganization of the Acquired Companies Within Windstream Holdings, Inc., Docket No. P3099, 5215, 5430, 5827/PA-16-972 (Feb. 7, 2017)(filed Nov. 23, 2016)(consent calendar). <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7b9EBF0BE0-12DA-4C4C-8044-E5F39133AE8A%7d&documentTitle=20172-128884-01>.

Zayo/Electric Lightwave – February 1, 2017 (61 Days – consent order)

Approved the transfer of control of Electric Lightwave, LLC, Eschelon Telecom of Minnesota, Inc., Integra Telecom of Minnesota, Inc., and Scott-Rice Telephone Company from Electric Lightwave Parent, Inc. to Zayo Group, LLC.

- Electric Lightwave, LLC, Eschelon Telecom of Minnesota, Inc., Integra Telecom of Minnesota, Inc. and Scott-Rice Telephone Company are responsible for regulatory filings and fees.
- Applicants must file a notice of completion within 20 days of the completion of the Transaction.
- Applicants must contact the appropriate 911 agency if any changes occur to its 911 Plan as a result of the Transaction.

In the Matter of the Joint Application of Electric Lightwave Parent, Inc., Electric Lightwave, LLC, Eschelon Telecom of Minnesota, Inc., Integra Telecom of Minnesota, Inc., Scott-Rice Telephone Company, and Zayo Group, LLC for Approval to Transfer Indirect Control of Licenses to Zayo Group, LLC, Docket No. P-6854, 5423, 5340, 426/PA-16-1016 (Feb. 1, 2017) (filed December 1, 2016) (consent calendar).

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7bDE523238-5529-4B49-B2FA-DE3FA7CF68F2%7d&documentTitle=20172-128730-01>.

Verizon/Teleconnect (43 Days – Consent Order)

Approved the transfer of customers from Teleconnect Long Distance Services and Systems Co. (Teleconnect) to MCI Communications Services, Inc. d/b/a Verizon Business Services.

- This transaction does not violate the anti-slamming requirements of Minn. Stat. § 237.661, subd. 1 (MCI).
- Relinquishment of Teleconnect’s certificate of authority becomes effective upon approval of MCI’s tariff update and receipt of the notice that the Transfer is complete.
- MCI must submit an update to its existing tariff that mirrors the price lists of Teleconnect or a statement explaining why no such update is necessary within 30 days of the date of this order.
- Customer notice has been provided to customers whose service is transferred from Teleconnect to MCI.
- Teleconnect has filed its 2013 Jurisdictional Annual Report and a final 2014 Jurisdictional Annual Report will be filed for Teleconnect.
- Neither MCI nor Teleconnect has any unpaid regulatory assessments, and MCI will be responsible for any future regulatory assessments of Teleconnect.
- Petitioners must notify the Commission within 20 days of the consummation of the closing of the internal corporate reorganization.
- There are no current plans to use Teleconnect as a business name, but the brand is not being relinquished.

In the Matter of a Petition for the Transfer of Customers by MCI Communications Services, Inc. d/b/a Verizon Business Services and Teleconnect Long Distance Services and Systems Co., Docket No. P-3012, 478/PA-14-673 (Sept. 24, 2014)(filed Aug. 12, 2014).

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7bF90A56DA-264F-49FF-B699-8BF1D40E11AD%7d&documentTitle=20149-103269-01>.

Level 3/tw telecom of Minnesota, llc - August 12, 2014 (Consent Order - 41 Days)

Approved the transfer of control of tw telecom of minnesota, llc.

- Applicants shall inform the Commission that the proposed transaction has closed within 20 days of its consummation, and continue to file jurisdictional annual reports and other regulatory filings and pay regulatory assessments for tw telecom of minnesota, llc.
- tw telecom of minnesota, llc will operate under their existing certificates of authority.

In the Matter of the Joint Application for Approval of Transfer of Control of tw telecom of minnesota, llc to Level 3 Communications, Inc., Docket No. P-5981, 5733/PA-14-570 (Aug. 12, 2014) (filed July 2, 2014).

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7bF90A56DA-264F-49FF-B699-8BF1D40E11AD%7d&documentTitle=20149-103269-01>.