



State of Utah
Department of Commerce
Division of Public Utilities

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MEMORANDUM

To: Public Service Commission

From: Division of Public Utilities
Chris Parker, Director
Bill Duncan, Telecommunications / Water Manager
Casey J. Coleman, Utility Technical Consultant

Date: January 18, 2017

Re: In the Matter of the Joint Application for all Approvals Required Under Utah Code for the Transfer of Control of Level 3 Communications, Inc. together with: Level 3 Communications, LLC; Broadwing Communications, LLC; WiTel Communications, LLC; Global Crossing Telecommunications, Inc; Global Crossing Local Services, Inc; and Level 3 Telecom of Utah, LLC; to Transferee, CenturyLink, Inc. per Docket No. 16-2246-01, 16-2266-01, 16-2271-01, 16-2351-02.

RECOMMENDATION:

The Division of Public Utilities (“Division”) has reviewed the joint application filed by Level 3 Communications, Inc. (“Level 3”) and CenturyLink, Inc. (“CenturyLink”) (together “Joint Applicants”) for all approvals and certificates that may be necessary or required for the indirect transfer of control of all Level 3 operating entities certificated by the Public Service Commission (“Commission”) and recommends the Commission grant the Joint Applicant’s petition.

ISSUES:

On or about December 16, 2016, The Joint Applicants filed an application regarding the indirect transfer of control of all Level 3 operating entities certificated by the Commission to CenturyLink. Once the transaction is completed, all of the Level 3 operating companies will be indirect, wholly owned subsidiaries of CenturyLink. The Division has reviewed the information and found the following:

The Joint Applicants submitted the application pursuant to and meeting the requirements of Utah Code Ann. §§ 54-4-28, 54-4-29, and 54-4-30. The application included a request for an informal adjudication of the merger pursuant to R746-349-7. In the informal adjudication process outlined in the rule parties

have 14 days after notification by the Commission to file comments. Reply comments can be filed 21 days after notice by the Commission and a hearing scheduled within 30 days of the application.

Rule R746-349-7 requires the Joint Applicants to submit an application that includes:

- Identification that QCC is not an ILEC,
- Identification that QCC seeks approval for the application pursuant to this rule,
- A reasonably detailed description of the transaction for which approval is sought,

The application filed by the Joint Applicants satisfies the requirements for an informal adjudicated proceeding. Level 3 serves customers in the state of Utah as a Competitive Local Exchange Carrier (“CLEC”). Additionally, CenturyLink indicated that it is not an ILEC in the State of Utah, (CenturyLink’s ILEC Qwest Corporation d/b/a CenturyLink QC will not be impacted by this transaction), the application indicated the desire to proceed under the rule and the description provided by the Joint Applicants allowed for an understanding of the structure of the CLEC once the transaction has been consummated. Because the requirements have been satisfied for an informal adjudication the Division believes this application should proceed in that manner.

As of the date of this memo, no parties have filed comments in this proceeding. Accounting for the various holidays over the past couple of weeks, and using a very generous definition of days to mean business days, the latest deadline of 14 days for filing comments would be January 18, 2017. Because no other parties besides the Division has filed comments the Commission should proceed with a hearing and grant the petition.

Even though the Division does not foresee parties filing comments detailing reasons why the Commission should not proceed with this merger as two CLECs joining companies. If a company does file comments, the Division would request additional time other than the proposed schedule to adequately review the filed comments.

The Joint Applicants submit that the transaction described will serve the public interest. The transaction will enable the Applicants to combine their complementary fiber networks to offer customers of enterprise services a broader range of on-net services and solutions than they currently can obtain from the Applicants individually, reduce the combined company’s dependence on leased fiber facilities, and, by enhancing the combined company’s reach and financial profile, strengthen its ability to invest and compete for the long term. In doing so, the proposed Transaction will allow the combined company not only to provide better service and a fuller suite of solutions to its base of enterprise customers, but also to serve as a stronger competitor to compete successfully for these customers.

The Joint Applicants further submits that CenturyLink and Level 3 have in the past focused primarily on serving different geographic areas and customer segments. CenturyLink is a mid-sized ILEC that provides voice, broadband, and video services to business and residential customers in rural, suburban and urban territories, including Utah. CenturyLink serves some enterprise customers both within and outside of its ILEC territory, but its fiber-based footprint for high-demand services such as Ethernet is

limited relative to that of its largest competitors, especially outside of its ILEC territory. CenturyLink has a relatively modest internet backbone and a small resale-based presence in the international transport market. In fact, it holds a small ownership interest in only one subsea cable that lands in the U.S. and otherwise leases all of its international transport capacity (including to and from the U.S.) from others.

In contrast, Level 3 serves no residential customers. It focuses on serving businesses, primarily large enterprise customers. Most of Level 3's customers are located outside of CenturyLink's ILEC territory. Level 3 serves customer locations via its own fiber facilities where possible, but Level 3's fiber facilities do not reach the majority of the customer locations it serves. Where this is the case, Level 3 serves the customer locations via end user connections leased from another carrier. Still, Level 3 has been able to use those connections to become a leader in the provisioning of high-demand Ethernet services to customers, again primarily outside of CenturyLink's ILEC territory. Level 3 also has a significant internet backbone and an international transport business.

The Division has reviewed the application of the Joint Applicants regarding the transfer of control of Level 3 to CenturyLink and recommends the Commission grant the petition using the informal adjudication process. The Division believes by granting the merger, customers served by the ILEC will not see any material impacts. CenturyLink has indicated they will continue to invest in the telecommunications infrastructure in the state of Utah. Because CenturyLink and Level 3 have pursued divergent customer segments, combining the companies could provide another robust competitor to the telecommunications industry in the state of Utah. For all of the above mentioned reasons, granting the application is in the public interest.

cc: Justin Jetter, Assistant Attorney General
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