copyright; the '732 copyright; the '735 copyright; the claim of the '397 design patent; the claim of the '533 design patent; the claim of the '146 design patent; and the claim of the '775 design patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(c) whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain insulated beverage containers, components, labels, and packaging materials thereof by reason of infringement of one or more of the '441 trademark and the '074 trademark; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: YETI Coolers, LLC, 7601 Southwest Parkway, Austin, Texas 78735

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Alibaba (China) Technology Co., Ltd., 26/F Tower One, Times Square, l Matheson Street, Causeway Bay, Hong Kong
Alibaba Group Holding Limited, c/o Alibaba Group Services Limited, 26/F Tower One, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong
Alibaba.com Hong Kong Limited, 26/F Tower One, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong
Alibaba.com Singapore E-Commerce Private Limited, 26/F Tower One, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong
Bonanza.com, Inc., 3131 Western Ave, Suite 428, Seattle, WA 98121
ContextLogic, Inc. d/b/a/Wish, 1 Sansome Street, 40th Floor, San Francisco, CA 94104
Dunhuang Group, 6F Dimeng Commercial Building, No. 3–2 Hua Yuan Road, Haidian District Beijing 100191, China
Hangzhou Alibaba Advertising Co., Ltd., 26/F Tower One, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong
Huizhou Dashu Trading Co., Ltd., 2001 Unit 2, #203 Building, Jinshanhu Garden, Huanhu Third Road, Huicheng District, Huizhou City, Guangdong Province, China
Huagong Trading Co., Ltd., WANGSHIZHUANG, QINGHE County, Hebei, QINGH,, Hebei, China
Tan Er Pa Technology Co., Ltd., Floor 9 10, No. 29 Qianlu, Manfeng Village Shajing, Kwai Chung N.T., Hong Kong
Shenzhen Great Electronic Technology Co.,, Ltd., Room 3108A, Modern International,, Jintian Rd, Futian District, Shenzhen,, China 518000
SZ Flowerfairy Technology Ltd., 115 Room, No. 12, Building Pinshangyuan, Xixiang Street, Baoan District, Shenzhen, China

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 17, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–25360 Filed 11–22–17; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–17–054]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 29, 2017 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–476 and 731–tA–1179 (Review) (Multilayered Wood Flooring from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission by December 13, 2017.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 20, 2017.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2017–25491 Filed 11–21–17; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. CenturyLink, Inc. and Level 3 Communications, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *CenturyLink, Inc. and Level 3 Communications, Inc.,* Civil Action No. 17–cv–2028 (KBJ). On October 2, 2017, the United States filed a Complaint alleging that CenturyLink, Inc.'s proposed acquisition of Level 3 Communications, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint,

requires the defendants to: (1) Divest to an acquirer (or acquirers) all of the assets used by Level 3 exclusively or primarily to support provision of telecommunications services to enterprise and wholesale customer locations in the Albuquerque, New Mexico, Boise, Idaho, and Tucson, Arizona Metropolitan Statistical Areas, and (2) provide to an acquirer an indefeasible right to use twenty-four strands of intercity dark fiber connecting thirty specific city pairs.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Scott A. Scheele, Chief, Telecommunications and Broadband Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 7000, Washington, DC 20530 (telephone: 202–616–5924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, United States Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 7000, Washington, DC 20530, Plaintiff v. *Centurylink, Inc.,* 100 CenturyLink Drive, Monroe, Louisiana 71203 and *Level 3 Communications, Inc.,* 1025 Eldorado Boulevard, Broomfield, Colorado 80021 Defendants.
Civil Action No: 1:17-cv-2028
Judge: Ketanji Brown Jackson

COMPLAINT

The United States of America brings this civil action to enjoin the acquisition of Level 3 Communications, Inc. by CenturyLink, Inc. and to obtain other equitable relief.

I. NATURE OF THE ACTION

1. On October 31, 2016, CenturyLink, Inc. (''CenturyLink'') and Level 3 Communications, Inc. (''Level 3'') entered into an Agreement and Plan of Merger whereby CenturyLink would acquire Level 3. CenturyLink's proposed acquisition of Level 3 would consolidate two of the largest wireline telecommunications services providers in the United States.

2. CenturyLink and Level 3 compete to provide fiber-optic-based connectivity and telecommunications services to enterprise and wholesale customers. Enterprise customers (including all sizes of businesses and institutions, such as community colleges, hospitals, and government agencies) purchase high quality fiber-optic-based connectivity and telecommunications services from CenturyLink and Level 3 for their own telecommunications services needs. Wholesale customers (*i.e.,* telecommunications carriers seeking to provide telecommunications services to customer locations in areas where they do not have their own wireline infrastructure) purchase local network and building-level fiber connectivity from CenturyLink and Level 3 in order to provide telecommunications services to their end-user customers.

3. In three Metropolitan Statistical Areas (''MSAs'') [1]—Albuquerque, New Mexico; Boise, Idaho; [2] and Tucson, Arizona—CenturyLink and Level 3 have two of the three most extensive fiber-based metropolitan area networks. Without significant competitors to rival their networks' scale in each of these three MSAs, CenturyLink and Level 3 represent each other's closest competitor for many enterprise and wholesale customers in these MSAs, including, for example, enterprise customers with locations spread throughout an MSA. In many buildings within each of these three MSAs, CenturyLink and Level 3 are the only two providers, or two of only three providers, that own a direct fiber connection to the building. In a substantial proportion of buildings in these MSAs, though CenturyLink and Level 3 may not be connected to these buildings, they are the only two providers with metropolitan area network fiber located close enough to connect economically, making CenturyLink and Level 3 the best options for customers in those buildings. The consolidation of these two competitors thus would likely substantially lessen competition for the provision of fiber-optic-based connectivity and telecommunications services in these three MSAs in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. CenturyLink and Level 3 also own substantial amounts of dark fiber connecting pairs of cities (''Intercity Dark Fiber''). Dark fiber is fiber-optic cable that has been installed, typically in conduit in the ground, but has not been ''lit'' by attaching optical electronic equipment at each end. Fiber that has had such equipment attached is called ''lit'' fiber because the equipment sends data through the fiber in the form of light waves. Such lit fiber can rapidly transmit thousands of terabits of data. Owners of Intercity Dark Fiber may ''light'' the fiber themselves and then use the lit fiber to sell telecommunications services, including data transport, to customers. But only a small handful of Intercity Dark Fiber owners, including CenturyLink and Level 3, also sell the fiber ''dark'' and permit customers to add their own electronic equipment and control their own data transport. Between some city pairs, CenturyLink and Level 3 are the only two Intercity Dark Fiber providers. Between some other city pairs, CenturyLink and Level 3 are two of only three Intercity Dark Fiber providers.

5. Dark fiber is a crucial input for large, sophisticated customers that need to move substantial amounts of data between specific cities. These customers have specialized data transport needs, including capacity, scalability, flexibility, and security, that can be fulfilled only by Intercity Dark Fiber. CenturyLink and Level 3 compete to sell Intercity Dark Fiber to these customers, and this competition has led to lower prices for and increased availability of Intercity Dark Fiber. The consolidation of these two competitors would likely substantially lessen competition for the sale of Intercity Dark Fiber for thirty city pairs in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. DEFENDANTS AND THE TRANSACTION

6. CenturyLink is a Louisiana corporation headquartered in Monroe, Louisiana. It is the third largest wireline telecommunications provider in the United States and is the Incumbent Local Exchange Carrier (''ILEC'') [3] in

[1] An MSA is a geographical region defined by the Office of Management and Budget for use by federal statistical agencies, such as the Census Bureau. It is based on the concept of a core area with a large concentrated population, plus adjacent communities having close economic and social ties to the core. For the purposes of this Complaint, it includes the dense central business districts in Albuquerque, Tucson, and Boise as well as the adjacent, connected communities.

[2] The full name of this MSA as defined by the Office of Management and Budget is Boise City-Nampa, Idaho.

[3] An **incumbent local exchange carrier (ILEC)** is the telephone company that was the sole provider of local exchange service (local phone service) in a given local area prior to passage of the 1996

portions of 37 states. CenturyLink owns one of the most extensive physical fiber networks in the United States, including metropolitan area network components and direct fiber connections to numerous commercial buildings throughout the United States, particularly where it serves as the ILEC, as well as considerable intercity fiber infrastructure. Over the past ten years, CenturyLink has grown by acquiring a number of other large telecommunications providers, including Embarq Corporation in 2009 and Qwest Communications, Inc. in 2011. As of December 31, 2016, CenturyLink owned and operated a 360,000 route-mile global network, including a 265,000 route-mile U.S. fiber network, and generated 2016 operating revenues of $17.47 billion.

7. Level 3 is a Delaware corporation headquartered in Broomfield, Colorado. It is one of the largest wireline telecommunications companies in the United States and operates as one of the largest Competitive Local Exchange Carriers (''CLEC''), owning significant local network assets comprised of metropolitan area network components and direct fiber connections to numerous commercial buildings throughout the United States, including within portions of CenturyLink's ILEC territory. Level 3 operates one of the most extensive physical fiber networks in the United States, including sizeable intercity fiber infrastructure. Level 3 has made a number of significant acquisitions in the past ten years, including Global Crossing Limited in 2011 and tw telecom inc. in 2014. Level 3 owns and operates a 200,000 route-mile global fiber network and generated $8.172 billion of operating revenues in 2016.

8. On October 31, 2016, CenturyLink and Level 3 entered into an Agreement and Plan of Merger whereby CenturyLink will acquire Level 3 for approximately $34 billion.

III. JURISDICTION AND VENUE

9. The United States brings this action under the direction of the Attorney General and pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain CenturyLink and Level 3 from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

10. CenturyLink and Level 3 are engaged in, and their activities substantially affect, interstate commerce. CenturyLink and Level 3 sell wireline telecommunications goods and services throughout the United States. The Court has subject-matter jurisdiction over this action and these defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Defendants CenturyLink and Level 3 transact business in the District of Columbia and have consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(b)(1) and (c).

IV. BACKGROUND

12. Wireline telecommunications infrastructure is critical in transporting the data that individuals, businesses, and other entities transmit. Among the key components of this infrastructure are: the fiber strands connecting an individual building to a metropolitan area network; the fiber strands and related equipment comprising a metropolitan area network that serve an entire city or MSA; and the intercity fiber strands connecting cities to one another.

13. Fiber strands connecting an individual building to the metropolitan area network serving an entire MSA are often referred to as ''last-mile'' connections. Without a last-mile fiber connection to the building, customers cannot send data to or receive data from any point outside of the building. And without the metropolitan area network to which those last-mile building fibers connect, customers cannot communicate with other buildings in the same MSA or reach any points beyond.

14. These fiber building connections and fiber-based metropolitan area networks carry critical telecommunications services for enterprise customers. They also provide a link over which wholesale providers—who sell services to end users in buildings to which the wholesale provider does not own direct fiber connections—can serve their own customers.

15. Each ILEC has its own territory, which can include entire MSAs and/or portions of MSAs. The ILEC typically has the largest number of fiber building connections in its territory. As such, CenturyLink typically has the largest number of fiber connections to the buildings where it is the ILEC, serving the majority of buildings that require high-bandwidth, high-reliability telecommunications services. CLECs like Level 3 have built fiber connections to buildings in CenturyLink's and other ILEC's territories, giving some buildings additional fiber connections. More recently, other entities like cable companies have begun investing in fiber connections to buildings in certain MSAs, though, like the CLECs, they typically have nowhere near the scale of the ILEC.

16. In the MSAs of Albuquerque, New Mexico; Boise, Idaho; and Tucson, Arizona, CenturyLink is the ILEC and owns the largest and most extensive fiber-based metropolitan area network, and Level 3 owns one of the top three largest fiber-based networks in all three MSAs. In each of these MSAs, CenturyLink owns fiber connections to more than a thousand buildings, while Level 3 owns connections to hundreds of buildings. In many of these buildings, CenturyLink and Level 3 also control the only last-mile fiber connections. Moreover, they are two of only three significant providers with metropolitan area network fiber nearby.

17. Intercity fiber connects a city's metropolitan area network to other cities' metropolitan area networks. Without fiber connecting cities' metropolitan area networks, each city would be an island, with no way for data sent by or destined for customers in one city to reach to or from any other city. This intercity fiber linking city pairs is distinct from metropolitan area network fiber that links locations within a city but does not connect outside—the only connection between a metropolitan area network and any point beyond is intercity fiber. CenturyLink and Level 3 are two of only a handful of companies with robust nationwide intercity fiber networks.

18. Companies can light intercity fiber to send data across long distances between cities. Intercity Dark Fiber providers can light the fiber themselves, supplying and controlling the optical electronic equipment, and then sell lit services to customers. Intercity Dark Fiber providers can also sell the fiber dark to large, sophisticated customers, in which case the customer purchases the right to control the underlying fiber and then arranges for placement of optical electronic equipment to light the fiber and manages its own traffic on the fiber.

19. Intercity Dark Fiber can provide customers additional data capacity, faster speeds, and more robust security and control over their data networks. Intercity Dark Fiber sales are typically structured as something similar to a long-term lease, known in the industry as an Indefeasible Right of Use (''IRU''),[4]

Telecommunications Act, which allowed for competitive local exchange carriers (CLECs) to compete for this local service.

[4] The FCC defines an IRU, in part, as an indefeasible long-term leasehold interest for a minimum total duration of ten years that gives the

Continued

with an up-front payment and some recurring fees for maintenance of the fiber. Only a few companies in the United States sell Intercity Dark Fiber. Most Intercity Dark Fiber providers also sell lit services, sometimes to the same customer.

V. RELEVANT MARKETS

A. Fiber-Based Enterprise and Wholesale Telecommunications Services Providing Local Connectivity to Customer Premises

20. Fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises constitutes a relevant market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

21. Customers require this product to deliver high-bandwidth, high-reliability telecommunications services. Customers who purchase fiber-based telecommunications services providing connectivity to their premises will not turn to other connectivity technologies (such as hybrid fiber-coax, copper, or fixed or mobile wireless) in sufficient numbers to make a small but significant increase in price of fiber-based telecommunications services unprofitable for a provider of these fiber-based telecommunications services.

22. In some instances, the relevant telecommunications services to individual buildings are priced and sold separately. In other instances, including where MSA-wide price lists are used and where customers have multiple locations throughout an MSA, sales and pricing may be determined at the level of the MSA. Customers with multiple building locations spread throughout an MSA may demand integrated telecommunications services to all locations. Providers with a broad fiber presence in an MSA may be best suited to supply such customers. For such situations, the nature of competition may be best assessed at the MSA level. The geographic markets relevant to these services are no narrower than each individual building and no broader than each MSA.

23. The relevant geographic markets and sections of the country under Section 7 of the Clayton Act, 15 U.S.C. 18, within which to assess the competitive impact of a combination of CenturyLink and Level 3 are the MSAs of Albuquerque, New Mexico; Boise, Idaho; and Tucson, Arizona (collectively, the ''Three MSAs'').

B. Intercity Dark Fiber

24. Intercity Dark Fiber constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. 18.

25. Level 3 and CenturyLink utilize their intercity fiber to sell both lit services and Intercity Dark Fiber. Lit services generally are sold for a certain capacity and paid for on a monthly basis. The provider serves the customer using the provider's optical electronic equipment, and the provider manages the traffic on the fiber. In contrast, dark fiber is generally sold through IRUs so that the customer can arrange for its own equipment to be placed and manage its own traffic on the fiber. Customers who buy Intercity Dark Fiber, including webscale companies[5] and financial institutions, require the properties of dark fiber for scalability, capacity, flexibility, and security. Lit services sold by telecommunications providers cannot match these qualities provided by Intercity Dark Fiber and are generally much more costly than Intercity Dark Fiber for these customers' purposes. Customers who purchase Intercity Dark Fiber will not turn to an alternate service like lit services in the event of a small but significant increase in the price of Intercity Dark Fiber.

26. The geographic markets relevant to this product are specific city pairs in the United States. Intercity Dark Fiber customers generally need to transport data between specific sources and destinations (for example, data centers and headquarters), and accordingly require a fiber connection between cities close to those locations. Customers who face a small but significant increase in price for Intercity Dark Fiber between a specific city pair typically will not substitute different city pairs in response.

27. Further, the directness of the route between cities is critical for purposes of reducing latency and expense. Therefore, Intercity Dark Fiber customers generally will consider only certain routes between a city pair to fulfill their needs. The more circuitous a route, the longer data needs to travel, and the more latency is introduced into the transmission. Longer routes are also more costly to operate as more amplifier and regeneration equipment must be added to the fiber to ensure proper transmission of the signal. Accordingly, only certain routes between a city pair are viable substitutes for Intercity Dark Fiber customers.

28. The relevant geographic markets and sections of the country under Section 7 of the Clayton Act, 15 U.S.C. 18, within which to assess the competitive impact of a combination of CenturyLink and Level 3 (collectively, the ''Thirty City Pairs'') are:

1. Atlanta-Nashville
2. Birmingham-Billingsley
3. Charlotte-Atlanta
4. Cleveland-Buffalo
5. Dallas-Memphis
6. Denver-Dallas
7. Denver-Kansas City
8. El Paso-San Antonio
9. Houston-New Orleans
10. Indianapolis-Cincinnati
11. Kansas City-St. Louis
12. Los Angeles-Las Vegas
13. Memphis-Nashville
14. Miami-Jacksonville
15. Nashville-Indianapolis
16. Orlando-Daytona Beach
17. Phoenix-El Paso
18. Portland-Salt Lake City
19. Raleigh-Charlotte
20. Richmond-Raleigh
21. Sacramento-Salt Lake City
22. Sacramento-San Francisco
23. Salt Lake City-Denver
24. San Diego-Phoenix
25. San Francisco-Los Angeles
26. Tallahassee-Jacksonville
27. Tallahassee-Tampa
28. Tampa-Miami
29. Tampa-Orlando
30. Washington, DC-Richmond

VI. ANTICOMPETITIVE EFFECTS

29. The transaction likely would substantially lessen competition in the markets of enterprise and wholesale fiber-based local connectivity telecommunications services in the Three MSAs.

30. Enterprise and wholesale customers in the Three MSAs who depend on fiber-based local connectivity telecommunications services provided by the defendants would be harmed as a result of CenturyLink's acquisition of Level 3. In particular, in addition to wholesale customers, in each of the Three MSAs there are a substantial number of enterprise customers with significant high-bandwidth, high-reliability telecommunications services needs. While some of these customers have a single location, many others have multiple locations throughout the metropolitan area and require telecommunications providers who can offer fiber-based connections to all of their locations. CenturyLink and Level 3

grantee the right to access and exclusively use specified strands of fiber or allocated bandwidth to provide a service as determined by the grantee. An IRU confers on the grantee substantially all of the risks and rewards of ownership.

[5] Webscale companies are those primarily engaged in the business of providing large amounts of data to end users through web-based services; they require facilities and infrastructure to create, store, and then transport that data across long distances.

use their metropolitan area networks to compete for customers at locations in the Three MSAs where the two companies already have connected fiber, and to compete for opportunities at new locations throughout the MSAs where CenturyLink and Level 3 could economically add lines to connect to new locations.

31. In each of the Three MSAs, CenturyLink is the largest provider of fiber connectivity and has fiber connections to over a thousand buildings. Level 3 has fiber connections to several hundred buildings in each of the Three MSAs, making it the second largest provider of fiber connectivity to buildings in Albuquerque and Tucson, and one of the top three largest in Boise. In many buildings in the Three MSAs, CenturyLink and Level 3 control the only last-mile fiber connections. Moreover, they are two of only three significant providers with fiber connections to, or metropolitan area network fiber nearby, buildings in the Three MSAs, representing a customer's best choices for this product in many instances in the Three MSAs. Competitor metropolitan area networks in these Three MSAs that have smaller, less robust networks are not close substitutes for CenturyLink's and Level 3's networks.

32. CenturyLink and Level 3 compete directly against one another to provide fiber-based enterprise and wholesale local connectivity telecommunications services to a wide variety of customers in the Three MSAs, including, but not limited to, small- to medium-sized enterprise customers with one or multiple locations, large multi-regional enterprise customers with branch locations in the Three MSAs, and wholesale customers who resell to all types of end users. Customers have benefitted from this competition, including by receiving lower prices and higher quality services. The acquisition of Level 3 by CenturyLink would represent a loss of this competition.

33. This loss of competition likely will result in increased prices for enterprise and wholesale customers purchasing fiber-based local connectivity telecommunications services in the Three MSAs. In each of the Three MSAs, CenturyLink and Level 3 operate in a highly concentrated market, representing for hundreds of buildings two of only three, and in some cases the only two, providers with fiber connectivity to or near customer premises. While currently these customers can turn to Level 3 if CenturyLink raises prices, the loss of Level 3 as a competitor would leave some customers with only one alternative and many others with no competitive choice at all. Post-merger, these highly concentrated markets will become significantly more concentrated, with the parties' combined share of all last-mile fiber building connections at approximately 90% in Albuquerque, New Mexico; 80% in Tucson, Arizona; and 70% in Boise, Idaho. Without Level 3 as a competitive constraint in these highly concentrated markets, the merged firm will have the incentive and ability to increase prices above competitive levels and reduce quality of service.

34. The transaction likely would also substantially lessen competition for Intercity Dark Fiber for the Thirty City Pairs. Webscale and financial customers who currently rely on Level 3 and CenturyLink to compete for Intercity Dark Fiber sales would be harmed by this transaction. Not all telecommunications providers sell Intercity Dark Fiber. The ability to sell Intercity Dark Fiber requires that a provider control enough fiber for its own operations and have enough remaining to sell the amount requested by the customer, on the route specified by the customer, and for the length of time required by the customer. CenturyLink and Level 3 are two of only a few providers, and in most cases the only two providers, who have this ability and offer to sell Intercity Dark Fiber between each of the Thirty City Pairs. Webscale company customers typically require dark fiber across multiple intercity routes, and they prefer dark fiber providers who can provide them with contiguous routes, including those spanning from coast to coast. CenturyLink and Level 3 are two of only three Intercity Dark Fiber providers with at least one contiguous route from the west coast to the east coast.

35. For the Thirty City Pairs, where competition is so highly concentrated, the acquisition of Level 3 by CenturyLink would represent a loss of crucial competition for customers who require Intercity Dark Fiber. The competition between CenturyLink and Level 3 for Intercity Dark Fiber between these city pairs has led to decreased prices and increased availability, with each defendant being more willing to lower price and offer more Intercity Dark Fiber, or offer Intercity Dark Fiber at all, in response to competitive pressure from the other. Currently, customers can turn to CenturyLink for Intercity Dark Fiber for any of the Thirty City Pairs if Level 3 raises price or is unwilling to sell Intercity Dark Fiber, but the loss of CenturyLink as a competitor would leave customers with no such option, providing the merged firm the incentive and ability to raise prices above competitive levels.

VII. ABSENCE OF COUNTERVAILING FACTORS

36. Entry of new competitors in the relevant markets is unlikely to prevent or remedy the proposed merger's anticompetitive effects.

37. The proposed merger would be unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that are likely to occur.

VIII. VIOLATIONS ALLEGED

38. The acquisition of Level 3 by CenturyLink likely would substantially lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

39. Unless enjoined, the acquisition will likely have the following anticompetitive effects, among others:

a. competition in the market for fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Three MSAs—Albuquerque, New Mexico; Boise, Idaho; and Tucson, Arizona—would be substantially lessened;

b. prices for fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Three MSAs would increase and quality of service would decline;

c. competition in the markets for Intercity Dark Fiber between each of the Thirty City Pairs would be substantially lessened;

d. prices for Intercity Dark Fiber between each of the Thirty City Pairs would increase; and

e. availability of Intercity Dark Fiber between each of the Thirty City Pairs would decrease.

IX. REQUESTED RELIEF

40. The United States requests that this Court:

a. adjudge and decree CenturyLink's acquisition of Level 3 to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. permanently enjoin and restrain CenturyLink and Level 3 from carrying out the Agreement and Plan of Merger dated October 31, 2016, or from entering into or carrying out any contract, agreement, plan, or understanding, by which CenturyLink would combine with or acquire Level 3, its capital stock, or any of its assets;

c. award the United States its costs for this action; and

d. award the United States such other and further relief as the Court deems just and proper.

Dated: October 2, 2017
Respectfully submitted,
FOR PLAINTIFF UNITED STATES:

MAKAN DELRAHIM
Assistant Attorney General
Antitrust Division

ANDREW C. FINCH
Principal Deputy Assistant Attorney General
Antitrust Division

DONALD G. KEMPF, JR.
Deputy Assistant Attorney General
Antitrust Division

PATRICIA A. BRINK
Director of Civil Enforcement
Antitrust Division

SCOTT A. SCHEELE (D.C. Bar #429061)
Chief
Telecommunications & Media Enforcement Section

LAWRENCE M. FRANKEL (D.C. Bar #441532)
Assistant Chief
Telecommunications & Media Enforcement Section

SCOTT REITER*
ALEXIS K BROWN–REILLY (D.C. Bar #1000424)
MAUREEN CASEY (D.C. Bar #415893)
ROBERT DRABA (D.C. Bar #496815)
CORY BRADER LEUCHTEN
KELLY SCHOOLMEESTER (D.C. Bar #1008354)
MATTHEW SIEGEL
CARL WILLNER (D.C. Bar #412841)
CATHARINE WRIGHT (D.C. Bar #1019454)
United States Department of Justice
Antitrust Division
Telecommunications & Media Enforcement Section
450 Fifth Street, N.W., Suite 7000
Washington, DC 20530
Telephone: (202) 598–8796
Facsimile: (202) 514–6381
Email: scott.reiter@usdoj.gov
*LEAD ATTORNEY TO BE NOTICED

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Centurylink, Inc. and Level 3 Communications, Inc., Defendants.

Civil Action No: 1:17-cv-2028
Judge: Ketanji Brown Jackson

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on October 2, 2017, the United States and defendants, CenturyLink, Inc. and Level 3 Communications, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. DEFINITIONS

As used in this Final Judgment:

A. ''*Acquirer*'' or ''*Acquirers*'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''*CenturyLink*'' means defendant CenturyLink, Inc., a Louisiana corporation with its headquarters in Monroe, Louisiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''*Level 3*'' means defendant Level 3 Communications, Inc., a Delaware corporation with its headquarters in Broomfield, Colorado, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''*Customer Premises Equipment*'' means equipment located on the customer premises side of the demarcation point with the telecommunications service provider and used to serve one customer at the location.

E. ''*Dark Fiber*'' means fiber optic strands provided without electronic or optronic equipment.

F. ''*Divestiture Assets*'' means the MSA Divestiture Assets and the Intercity Dark Fiber Assets.

G. ''*Divestiture MSA*'' means, separately, the MSAs of (1) Albuquerque, New Mexico; (2) Boise City-Nampa, Idaho; and (3) Tucson, Arizona.

H. ''*Gateway Location,*'' means a facility in or near an MSA where intercity fiber terminates and connects with a Metropolitan Area Network and/or other intercity fiber.

I. ''*Intercity Dark Fiber Assets*'' means IRUs for 24 strands of Dark Fiber in the same cable, if available, or if not available in the same cable, then in the same duct bank, on the Intercity Routes and any Dark Fiber necessary to connect any Intercity Route with another Intercity Route that terminates at a different Gateway Location in the same MSA. The term ''Intercity Dark Fiber Assets'' shall be construed as broadly as necessary to accomplish the purposes of this Final Judgment and any IRU shall provide the following:

(1) A term of twenty-five (25) years, with two options to extend for two (2) additional five (5) year terms (for a total of ten (10) years), exercisable at the Acquirer's sole discretion at any time during the initial 25-year term so long as written notice is provided to the defendants at least ninety (90) days prior to the expiration of the IRU term, and, for each five-year renewal term, at a price not to exceed 20% of the fee initially paid by the Acquirer for the Intercity Dark Fiber Assets;

(2) Subject to the approval of the United States, in its sole discretion, customary terms and conditions, including terms regarding respective operations and maintenance rights and obligations; fiber quality, testing, and technical performance; access; and cooperation;

(3) The right to assign the IRU, in whole or in part, without the consent of defendants; and

(4) All additional rights defendants have that are necessary (including, as needed, rights to access and occupy space in defendants' facilities) to enable the Acquirer or its assignee to provide telecommunications services using the Intercity Dark Fiber Assets.

J. ''*Intercity Routes*'' means Dark Fiber connecting the endpoints specified in Appendix B.

K. ''*IRU*'' means indefeasible right of use, a long-term leasehold interest that gives the holder the exclusive right to use specified fiber optic strands in a

telecommunications facility for a stated term.

L. ''*Lateral Connection*'' means fiber optic strands, from the demarcation point in a building, including any equipment at the demarcation point necessary to connect the fiber to Customer Premises Equipment, to the point at which such fiber optic strands are spliced with other fiber optic strands that serve multiple buildings, and any existing related duct, conduit, or other containing or support structure.

M. ''*Majority MSA Customers*'' means MSA Customers for which, as of August 2017, Level 3's monthly recurring revenues were greater in the Divestiture MSAs than outside the Divestiture MSAs.

N. ''*Metropolitan Area Network*'' means fiber optic strands that are used to connect Lateral Connections to one another and to Gateway Locations and any existing related duct, conduit or other containing or support structure.

O. ''*MSA*'' means Metropolitan Statistical Area, as defined by the Office of Management and Budget.

P. ''*MSA Customers*'' means customers who purchase telecommunications services from Level 3 at a location within any of the Divestiture MSAs, but shall not include the customers listed in Appendix A.

Q. ''*MSA Divestiture Assets*'' means all Level 3 assets, tangible and intangible, used exclusively or primarily to support Level 3's provision of telecommunications services to customer locations in the Divestiture MSAs, including, but not limited to, Lateral Connections, Metropolitan Area Network; ownership and access rights to all ducts, conduit, and other containing or support structure used by Level 3 to operate or augment such Lateral Connections and Metropolitan Area Network; and all switching, routing, amplification, co-location, or other telecommunications equipment used in or associated with those networks in each Divestiture MSA, up to Level 3's Gateway Location(s) in each Divestiture MSA. The MSA Divestiture Assets shall also include other assets used by Level 3 for its provision of telecommunications services to customer locations in each Divestiture MSA, including, but not limited to, all licenses, permits and authorizations related to the MSA Divestiture Assets issued by any governmental organization to the extent that such licenses, permits and authorizations are transferrable and such transfer would not prevent Level 3 from providing telecommunications services in the three Divestiture MSAs; all contracts (except as otherwise excluded by the terms of this Final Judgment), teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all MSA Customer lists (including the name of each MSA Customer and each Majority MSA Customer, the address of each MSA Customer location within the Divestiture MSAs, and the address of each Majority MSA Customer location within the Divestiture MSAs and outside the Divestiture MSAs); all repair and performance records relating to the MSA Divestiture Assets; and all other records relating to the MSA Divestiture Assets reasonably required to permit the Acquirer to conduct a thorough due diligence review of and to operate the MSA Divestiture Assets. The MSA Divestiture Assets shall not include assets, wherever located, used exclusively or primarily in or in support of Level 3's provision of telecommunications services outside the Divestiture MSAs, including the provision of telecommunications services between MSAs.

The term ''MSA Divestiture Assets'' shall be construed as broadly as necessary to accomplish the purposes of this Final Judgment and is subject to the following:

(1) The MSA Divestiture Assets shall not include Customer Premises Equipment in a location in a Divesture MSA currently owned by Level 3 unless and until the customer chooses the Acquirer as its supplier pursuant to Section IV(K) for that location; and

(2) Level 3's contracts to provide telecommunications services to customers are not included as MSA Divestiture Assets, but are subject to the process specified in Sections IV(K) and IV(L) of this Final Judgment.

III. APPLICABILITY

A. This Final Judgment applies to CenturyLink and Level 3, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV, Section V, and Section VI of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURE OF MSA DIVESTITURE ASSETS

A. Defendants are ordered and directed, within 120 calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the MSA Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers in each Divestiture MSA and on terms acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If approval or consent from any government unit is necessary with respect to divestiture of the MSA Divestiture Assets by defendants or the Divestiture Trustee and if applications or requests for approval or consent have been filed with the appropriate governmental unit within five (5) calendar days after the United States provides written notice pursuant to Section VII(E) that it does not object to the proposed Acquirer, but an order or other dispositive action on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those MSA Divestiture Assets for which governmental approval or consent has not been issued until five (5) calendar days after such approval or consent is received. Defendants agree to use their best efforts to divest the MSA Divestiture Assets and to seek all necessary regulatory or other approvals or consents necessary for such divestitures as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the entire MSA Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the MSA Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the MSA Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such

information to the United States at the same time that such information is made available to any other person.

C. With respect to each Divestiture MSA, defendants shall provide the Acquirer of MSA Divestiture Assets and the United States information relating to the personnel whose primary responsibilities relate to the operation of any MSA Divestiture Asset to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ such personnel.

D. Defendants shall permit prospective Acquirers of the MSA Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the MSA Divestiture Assets; access to any and all environmental, zoning, title, right-of-way, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to any Acquirer(s) that the MSA Divestiture Assets will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the MSA Divestiture Assets.

G. Subject to approval by the United States, defendants may enter into a negotiated contract with each Acquirer of MSA Divestiture Assets for a period of two (2) years from the closing date of the divestiture of the MSA Divestiture Assets, under which the Acquirer would provide to defendants all Lateral Connections and associated Metropolitan Area Network needed to support Level 3 customers in the applicable Divestiture MSA that choose to remain customers of defendants.

H. At the option of the Acquirer(s), defendants shall enter into a Transition Services Agreement for any services that are reasonably necessary for the Acquirer(s) to maintain, operate, provision, monitor, or otherwise support the MSA Divestiture Assets, including any required back office and information technology services, for a period of up to twelve (12) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. Defendants shall perform all duties and provide all services required of defendants under the Transition Services Agreement. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions. Any amendments, modifications or extensions of the Transition Services Agreement maybe entered into only with the approval of the United States, in its sole discretion.

I. Defendants shall use their best efforts to obtain from any third parties that provide Level 3, on a leased or IRU basis, Lateral Connections and Metropolitan Area Network in the Divestiture MSAs any consent necessary to transfer, assign, or sublease to the Acquirer the contract(s) for such Lateral Connections or Metropolitan Area Network to the extent related to the MSA Divestiture Assets and will effectuate the transfer, assignment, or sublease of such contract(s) to the Acquirer. The Acquirer and defendants may enter into a commercial services agreement to replace the service provided by any Level 3 Lateral Connections and Metropolitan Area Network in the Divestiture MSAs currently provided to Level 3 on a leased or IRU basis (1) if, because of withheld consent, the parties are unable to transfer, assign, or sublease to the Acquirer any contract(s) for such Lateral Connections or Metropolitan Area Network in the Divestiture MSAs currently provided to Level 3 on a leased or IRU basis; or (2) at the option of the Acquirer and subject to approval by the United States, in its sole discretion. Defendants shall use their best efforts to obtain from any third parties that provide Level 3 rights of way, access rights, or any other rights to operate, expand, or extend Lateral Connections or Metropolitan Area Network in the Divestiture MSAs any consent necessary to transfer such rights to the Acquirer(s).

J. Defendants shall warrant to the Acquirer(s) that they are not aware of any material defects in the environmental, zoning, title, right-of-way, or other permits pertaining to the operation of each asset, and that following the sale of the MSA Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, title, right-of-way, or other permits relating to the operation of the MSA Divestiture Assets.

K. For each Divestiture MSA, beginning on the closing date of the sale of the MSA Divestiture Assets and continuing for a period of the lesser of two (2) years from the closing date of the sale or the expiration of an MSA Customer's contract, provided the expiration is at least thirty (30) days after the closing date of the sale, defendants shall

(1) release the MSA Customers from their contractual obligations for any otherwise applicable termination fees for telecommunications services provided by Level 3 at locations within the applicable Divestiture MSA, in order to enable any MSA Customers, without penalty or delay, to elect to use the Acquirer for provision of such telecommunications services, and

(2) for any Majority MSA Customers, defendants shall release such customers from their contractual obligations for all Level 3 services for any otherwise applicable termination fees charged by defendants, at all locations serviced by Level 3, even if located outside the applicable Divestiture MSA, provided that defendants and Acquirer shall each be required to pay half of any third-party fees associated with the termination of delivery of telecommunications services to each Majority MSA Customer at each terminated location outside the Divestiture MSAs, in order to enable these customers, without penalty imposed by defendants or delay, to elect to use the Acquirer for the provision of such telecommunications services.

L. For a period of two (2) years following the entry of this Final Judgment, defendants shall not initiate customer-specific communications to solicit any MSA Customer or Majority MSA Customer to provide any telecommunications services to locations for which such customers have elected to use an Acquirer as its provider of telecommunications services pursuant to the process specified in Section IV(K) of this Final Judgment; provided however, that defendants may (1) respond to inquiries and enter into negotiations to provide service at these locations or other locations at the request of the customer and (2) except for any location at which the MSA Customer has elected to use an Acquirer as its provider of telecommunications services pursuant to the process specified in Section IV(K), continue to solicit business opportunities from any MSA Customer that was prior to the entry of this Final Judgment a customer of CenturyLink in the Divestiture MSA.

M. Within fifteen (15) business days of the date of the sale of any MSA Divestiture Assets to an Acquirer, defendants shall communicate, in a form approved by the United States in its sole discretion, to all MSA Customers notifying the recipients of the divestiture and providing a copy of this Final Judgment. Defendants shall provide the United States a copy of this notification at least ten (10) business days before it is sent. The notification shall specifically advise customers of the rights provided under Sections IV(K) and IV(L) of this Final Judgment. The

Acquirer shall have the option to include its own notification along with defendants' notification.

N. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section VI, of this Final Judgment, shall include the entire MSA Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the MSA Divestiture Assets can and will be used by the Acquirer or Acquirers as part of a viable, ongoing business providing telecommunications services. Divestiture of the MSA Divestiture Assets may be made to one or more Acquirers, provided that (i) all MSA Divestiture Assets in a given Divestiture MSA are divested to a single Acquirer unless otherwise approved by the United States, in its sole discretion, and (ii) in each instance it is demonstrated to the sole satisfaction of the United States that the MSA Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment,

(1) shall be made to an Acquirer (or Acquirers) that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of telecommunications services; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. DIVESTITURE OF INTERCITY DARK FIBER ASSETS

A. Defendants are ordered and directed, within 120 calendar days after the closing of CenturyLink's acquisition of Level 3, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Intercity Dark Fiber Assets in a manner consistent with this Final Judgment to an Acquirer and on terms acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If approval or consent from any government unit is necessary with respect to the sale of the Intercity Dark Fiber Assets by defendants or the Divestiture Trustee and if applications or requests for approval or consent have been filed with the appropriate governmental unit within five (5) calendar days after the United States provides written notice pursuant to Section VII(E) that it does not object to the proposed Acquirer, but an order or other dispositive action on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Intercity Dark Fiber Assets for which governmental approval or consent has not been issued until five (5) calendar days after such approval or consent is received. Defendants agree to use their best efforts to divest the Intercity Dark Fiber Assets and to seek all necessary regulatory or other approvals or consents necessary for such divestitures as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Section, defendants promptly shall make known, by usual and customary means, the availability of the Intercity Dark Fiber Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Intercity Dark Fiber Assets that they are being sold pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Intercity Dark Fiber Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall permit prospective Acquirers of the Intercity Dark Fiber Assets to have reasonable access to personnel and to such other documents and information customarily provided as part of an IRU transaction, including but not limited to fiber type and performance specifications; date of fiber installation; fiber repair history; fiber maps; route miles; gateway, interconnection, amplification, and regeneration locations; and right-of-way type, owner, and expiration.

D. Defendants shall warrant to the Acquirer that the Intercity Dark Fiber Assets will be available; provided, however, that the Intercity Dark Fiber Assets may be sold prior to the completion date for additional construction that is required to connect the Dallas to Memphis Dark Fibers to the Memphis Gateway Location specified in Appendix B so long as the defendants have taken all appropriate actions to obtain such permits and approvals and to complete the construction of the connection expeditiously thereafter. The Defendants will warrant to the Acquirer that the Acquirer or other end user of the Dark Fiber will be able to light each Dark Fiber pair on the Intercity Routes using one set of electronic or optronic equipment.

E. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Intercity Dark Fiber Assets.

F. Defendants shall warrant to the Acquirer that there are currently no material defects in the environmental, zoning, title, right-of-way, or other permits pertaining to the operation of the Intercity Dark Fiber Assets, and that following the sale of the Intercity Dark Fiber Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, title, right-of-way, or other permits relating to the operation of the Intercity Dark Fiber Assets.

G. Unless the United States otherwise consents in writing, the sale pursuant to Section V, or by Divestiture Trustee appointed pursuant to Section VI, of this Final Judgment, shall include the entire Intercity Dark Fiber Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Intercity Dark Fiber Assets can and will be used by the Acquirer as part of a viable, ongoing telecommunications services business including the sale of Dark Fiber IRUs to end users. Divestiture of the Intercity Dark Fiber Assets must be made to a single Acquirer unless otherwise approved by the United States, in its sole discretion. The sale, whether pursuant to Section V or Section VI of this Final Judgment,

(1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the sale of Dark Fiber IRUs to end users; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

VI. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A) and Section V(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section VI(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants any investment bankers, attorneys, technical experts or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII.

D. The Divestiture Trustee shall serve at the cost and expense of defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory or other approvals or consents and will provide necessary representations or warranties as appropriate, related to the sale of the Divestiture Assets. The Divestiture Trustee and any consultants, accountants, attorneys, technical experts, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets, and defendants shall develop financial and other information relevant to the Divestiture Assets as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report~~s~~ contains information that the Divestiture Trustee deems confidential, such report~~s~~ shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VII. NOTICE OF PROPOSED DIVESTITURE

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such

notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), any other potential Acquirer, including, but not limited to, the contract (or contracts) required by Section IV(F) of this Final Judgment. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the United States shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section VI(C), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

VIII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV, Section V, or Section VI of this Final Judgment.

IX. ASSET PRESERVATION

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

X. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV, Section V, or Section VI, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV, Section V, or Section VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of the receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

XII. NO REACQUISITION

Except as provided in this Final Judgment, absent written approval by the United States, in its sole discretion, defendants may not reacquire or lease back any part of the Divestiture Assets during the term of this Final Judgment.

XIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or

construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: ______

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

______

United States District Judge

APPENDIX A

The following customers serviced in the Divestiture MSAs, identified for confidentiality purposes by Level 3's customer identification code, are excluded from the definition of MSA Customers and are not subject to the procedures outlined in Section IV(K) and (L) of this Final Judgment:

1. 1–8UM5C, Tucson, AZ
2. 2–LOTDXB, Albuquerque, NM
3. 2–79C52T, Boise, ID 83716
4. 1–5JXJ4, Albuquerque, NM
5. 2–TRJJST, Boise, ID

APPENDIX B

Route	Origin gateway location address	Termination gateway location address
Atlanta to Nashville	55 Marietta St. NW., Atlanta, GA 30303	460 Metroplex Dr., Nashville, TN 37211.
Birmingham to Billingsley	2001 Park Pl., Birmingham, AL 35203	4521 Chilton Rd., Billingsley, AL 36006.
Charlotte to Atlanta	731 E Trade St., Charlotte, NC 28202	55 Marietta St. NW., Atlanta, GA 30303.
Cleveland to Buffalo	1501 Euclid Ave., Cleveland, OH 44115	1090 Harlem Rd., Buffalo, NY 14227.
Dallas to Memphis	1950 N Stemmons Fwy., Dallas, TX 75207	715 S Danny Thomas Blvd., Memphis, TN 38126.
Denver to Dallas	23751 E 6th Ave., Aurora, CO 80018	1950 N Stemmons Fwy., Dallas, TX 75207.
Denver to Kansas City	23751 E 6th Ave., Aurora, CO 80018	711 E 19th St., Kansas City, MO 64108.
El Paso to San Antonio	201 E Main St., El Paso, TX 79901	231 Rotary St., San Antonio, TX 78202.
Houston to New Orleans	11947 N Fwy., Houston, TX 77060	1340 Poydras St., New Orleans, LA 70112.
Indianapolis to Cincinnati	550 Kentucky Ave., Indianapolis, IN 46225	607 Evans St., Cincinnati, OH 45204.
Kansas City to St Louis	711 E 19th St., Kansas City, MO 64108	11755 Dunlap Industrial Dr., Maryland Heights, MO 63043.
Los Angeles to Las Vegas	624 S Grand Ave., Los Angeles, CA 90017	4275 E Sahara Ave., Las Vegas, NV 89104.
Memphis to Nashville	715 S Danny Thomas Blvd., Memphis, TN 38126	460 Metroplex Dr., Nashville, TN 37211.
Miami to Jacksonville	36 NE 2nd St., Miami, FL 33132	421 W Church St., Jacksonville, FL 32202.
Nashville to Indianapolis	460 Metroplex Dr., Nashville, TN 37211	550 Kentucky Ave., Indianapolis, IN 46225.
Orlando to Daytona Beach	121 Weber St., Orlando, FL 32803	500 W International Speedway Blvd., Daytona Beach, FL 32114.
Phoenix to El Paso	429 S 6th Dr., Phoenix, AZ 85003	201 E Main St., El Paso, TX 79901.
Portland to Salt Lake City	707 SW Washington St., Portland, OR 97205	572 Delong St., Salt Lake City, UT 84104.
Raleigh to Charlotte	115 N Harrington St., Raleigh, NC 27603	731 E Trade St., Charlotte, NC 28202.
Richmond to Raleigh	4233 Carolina Ave., Richmond, VA 23222	115 N Harrington St., Raleigh, NC 27603.
Sacramento to Salt Lake City.	770 L St., Sacramento, CA 95814	572 Delong St., Salt Lake City, UT 84104.
Sacramento to San Francisco.	770 L St., Sacramento, CA 95814	200 Paul Ave., San Francisco, CA 94124.
Salt Lake City to Denver	572 Delong St., Salt Lake City, UT 84104	23751 E 6th Ave., Aurora, CO 80018.
San Diego to Phoenix	4216 University Ave., San Diego, CA 92105	429 S 6th Dr., Phoenix, AZ 85003.
San Francisco to Los Angeles.	200 Paul Ave., San Francisco, CA 94124	624 S Grand Ave., Los Angeles, CA 90017.
Tallahassee to Jacksonville	601 Stone Valley Way, Tallahassee, FL 32310	421 W Church St., Jacksonville, FL 32202.
Tallahassee to Tampa	601 Stone Valley Way, Tallahassee, FL 32310	5908A Hampton Oaks Pkwy., Tampa, FL 33610.
Tampa to Miami	5908A Hampton Oaks Pkwy., Tampa, FL 33610	36 NE 2nd St., Miami, FL 33132.
Tampa to Orlando	5908A Hampton Oaks Pkwy., Tampa, FL 33610	121 Weber St., Orlando, FL 32803.
Washington, DC to Richmond.	1500 Eckington Pl. NE., Washington DC 20002	4233 Carolina Ave., Richmond, VA 23222.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Centurylink, Inc.,* and *Level 3 Communications, Inc.* Defendants.

Civil Action No. 17-cv-2028
Judge: Ketanji Brown Jackson

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

Defendant CenturyLink, Inc. and defendant Level 3 Communications, Inc. entered into an agreement, dated October 31, 2016, pursuant to which CenturyLink would acquire Level 3. The United States filed a civil antitrust Complaint on October 2, 2017, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be a substantial lessening of competition in the markets for: (1) the provision of fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Albuquerque, New Mexico; Boise, Idaho [6]; and Tucson, Arizona

[6] The full name of this MSA as defined by the Office of Management and Budget is Boise City-Nampa, Idaho.

Metropolitan Statistical Areas [7] (the ''Divestiture MSAs''), and (2) the sale of dark fiber connecting the endpoints specified in Appendix B of the proposed Final Judgment (the ''Intercity Routes''), all in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. As a result of this loss of competition, prices for fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Divestiture MSAs would likely increase and quality of service would likely decrease, and prices for dark fiber on the Intercity Routes would likely increase and availability would likely decrease.

At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order and a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required: (1) to divest to an acquirer (or acquirers) all the assets used by Level 3 exclusively or primarily to support provision of telecommunications services to enterprise and wholesale customer locations in Albuquerque, Boise, and Tucson (the ''MSA Divestiture Assets''), and (2) to enter into indefeasible right of use (''IRU'') agreements with an acquirer for twenty-four strands of dark fiber on the Intercity Routes as well as dark fiber necessary to connect those strands with certain other routes (the ''Intercity Dark Fiber Assets'').

Under the terms of the Asset Preservation Stipulation and Order, defendants will take steps to ensure that the MSA Divestiture Assets are operated as ongoing, economically viable competitive assets and remain uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture. Subject to the approval of the United States, defendants shall appoint a person or persons to oversee the MSA Divestiture Assets. This person shall have complete, independent managerial responsibility for the MSA Divestiture Assets. Defendants will also preserve, maintain and take all actions necessary to be able to effectuate the sale of the Intercity Dark Fiber Assets.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Defendant CenturyLink is a Louisiana corporation headquartered in Monroe, Louisiana. It is the third-largest wireline telecommunications company in the United States and the incumbent Local Exchange Carrier (''ILEC'') [8] in portions of 37 states. CenturyLink also has one of the most extensive physical fiber networks in the United States, including considerable intercity fiber infrastructure. As of December 31, 2016, CenturyLink owned and operated a 360,000 route-mile global network, including a 265,000-route-mile U.S. fiber network, and generated 2016 operating revenues of $17.47 billion.

Defendant Level 3 is a Delaware corporation headquartered in Broomfield, Colorado. It is one of the largest wireline telecommunications companies in the United States and owns significant local network assets, comprised of metropolitan area network components and direct fiber connections to numerous commercial buildings throughout the United States, including within portions of CenturyLink's ILEC territory. Level 3 also operates one of the most extensive physical fiber networks in the United States, including sizeable intercity fiber infrastructure. Level 3 owns and operates 200,000 route-miles of global fiber and generated $8.17 billion of operating revenue in 2016.

On October 31, 2016, CenturyLink and Level 3 entered into an Agreement and Plan of Merger whereby CenturyLink will acquire Level 3 for approximately $34 billion.

B. Anticompetitive Effects of the Proposed Transaction

Wireline telecommunications infrastructure is critical in transporting the data that individuals, businesses, and other entities transmit. Among the key components of this infrastructure are: the fiber strands connecting an individual building to a metropolitan area network (often referred to as the last-mile connection); the fiber strands and related equipment comprising a metropolitan area network that serve an entire city or MSA; and the intercity fiber strands connecting cities to one another.

(1) Fiber-Based Enterprise and Wholesale Telecommunications Services Providing Local Connectivity to Customer Premises in the Divestiture MSAs

Enterprise and wholesale customers [9] of all sizes rely on last-mile connections to link their premises to a larger metropolitan area network and to all points beyond. In the Divestiture MSAs, defendants have two of the three largest fiber-based metropolitan area networks and own among the largest number of last-mile connections of any telecommunications providers.

CenturyLink has the largest number of last-mile connections in each of the Divestiture MSAs, serving the majority of buildings that require high-bandwidth, high-reliability telecommunications services. In each of the Divestiture MSAs, CenturyLink owns fiber connections to more than a thousand buildings. Level 3 has fiber connections to several hundred buildings in each of the Divestiture MSAs, making it one of the three largest fiber-based networks in each of the Divestiture MSAs. In many buildings in the Divestiture MSAs, CenturyLink and Level 3 control the only last-mile fiber connections and are the only available choices for customers in those buildings. In other buildings in the Divestiture MSAs, CenturyLink and Level 3 are two of only three significant providers, making them two of only three available choices. And even where CenturyLink and Level 3 do not presently have fiber connections, they still may be the best alternative for a substantial number of buildings because they are the only two providers with metropolitan area network fiber located close enough to connect economically.

Some customers within the Divestiture MSAs have multiple locations throughout an individual MSA. These multi-location customers often prefer to buy telecommunications services for all of their locations within

[7] An MSA is a geographical region defined by the Office of Management and Budget for use by federal statistical agencies, such as the Census Bureau. It is based on the concept of a core urban area with a large concentrated population, plus adjacent communities having close economic and social ties to the core.

[8] An **incumbent local exchange carrier (ILEC)** is the telephone company that was the sole provider of local exchange service (local phone service) in a given local area prior to passage of the 1996 Telecommunications Act, which allowed for competitive local exchange carriers (CLECs) to compete for this local service.

[9] Enterprise customers are broadly defined here to include businesses of varying sizes and institutional customers such as community colleges, hospitals and government agencies. Wholesale customers are, typically, telecommunications carriers seeking to reach customer locations in areas where they do not have wireline infrastructure.

the MSA from a single provider. Defendants CenturyLink and Level 3 both have an extensive fiber footprint in each of the Divestiture MSAs. As a result, CenturyLink and Level 3 are often each other's closest competitors for these multi-location customers.

Currently, CenturyLink and Level 3 compete head-to-head to provide these last-mile fiber-based telecommunications services to single and multi-location customers in the Divestiture MSAs. Customers benefit from this competition through lower prices and higher quality service. CenturyLink's acquisition of Level 3 likely would result in a loss of this competition, leading to increased prices and decreased service quality for such last-mile connections.

(2) Intercity Dark Fiber

CenturyLink and Level 3 both own substantial networks of fiber-optic cable connecting cities throughout the United States. By placing electronic equipment on either end of the fiber, fiber owners can ''light'' the fiber and use it to transmit large volumes of data between cities. Fiber owners who light the cable can then charge customers to transport data over the fiber (a product called lit services). Customers who purchase lit services typically buy a certain amount of data capacity between two specified endpoints, pay on a monthly basis, and rely on the fiber provider to manage their data traffic.

Fiber owners can also sell dark fiber, where customers purchase rights to the underlying fibers, provide their own electronic equipment to light the fiber, and manage their own networks. Dark fiber is generally sold through IRUs—a type of long-term lease—which allow the customer to arrange for its own equipment to be placed on the fiber, but permits the grantor to retain responsibility for maintaining the fiber and dealing with outages or cuts. Customers who buy intercity dark fiber using IRUs, such as webscale companies [10] and financial institutions, require dark fiber's scalability, capacity, flexibility, and security.

CenturyLink and Level 3 are two of only a handful of companies with robust nationwide intercity fiber networks, and two of only a few companies in the United States that sell intercity dark fiber. On many of the Intercity Routes, CenturyLink and Level 3 are the only two, or two of only three, providers who sell intercity dark fiber. In addition, customers typically require dark fiber across multiple routes and prefer dark fiber providers who can provide them with contiguous routes, including those spanning from coast to coast. CenturyLink and Level 3 are two of only three intercity dark fiber providers with at least one contiguous route connecting the West Coast to the East Coast.

Competition between CenturyLink and Level 3 has led to lower prices for and increased availability of intercity dark fiber. This acquisition will eliminate that competition, likely resulting in increased prices and decreased availability.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestitures required by the proposed Final Judgment will eliminate the anticipated anticompetitive effects of the acquisition in the markets for: (1) The provision of fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Divestiture MSAs, and (2) the sale of dark fiber on the Intercity Routes, by establishing independent and economically viable competitors in each of these markets. The proposed Final Judgment requires defendants, within 120 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to:

(1) divest the MSA Divestiture Assets to a single acquirer in each Divestiture MSA (while each MSA network may not have more than one acquirer, each of the MSAs may have a different acquirer), on terms acceptable to the United States, and

(2) sell the Intercity Dark Fiber Assets to a single acquirer on terms acceptable to the United States.

Both the MSA Divestiture Assets and the Intercity Dark Fiber Assets are attractive assets that should draw suitable acquirers with sufficient expertise to accomplish the divestitures expeditiously. Prompt divestitures are important both to minimize customer uncertainty and to maintain the pre-merger competitiveness of the markets in question. Although the United States expects the divestitures to be completed within the 120-day period, in order to preserve flexibility to address unanticipated circumstances the United States may, in its sole discretion, agree to one or more extensions of this time period not to exceed sixty calendar days in total, and shall notify the Court in such circumstances.

The divestitures shall be made to an acquirer (or acquirers) that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the provision of the relevant telecommunications services in the Divestiture MSAs or the sale of intercity dark fiber.

A. MSA Divestiture Assets

With regard to the Divestiture MSAs, the United States is requiring the divestiture of Level 3's entire fiber-based metropolitan area network, including all its last-mile connections. This will encompass all assets, tangible and intangible, used exclusively or primarily to support Level 3's provision of fiber-based telecommunications services to customer locations in the Divestiture MSAs, including, but not limited to, assets such as metropolitan fiber switching and routing equipment, building laterals, ownership interests in and access rights to all conduits, duets and other containing and supporting structures, and repair and performance records.

The MSA Divestiture Assets shall also include other assets used by Level 3 for its provision of telecommunications services to customer locations in each Divestiture MSA, including, but not limited to, all licenses, permits and authorizations related to the MSA Divestiture Assets issued by any governmental organization to the extent that such licenses, permits and authorizations are transferrable and such transfer would not prevent Level 3 from providing telecommunications services in the three Divestiture MSAs; all contracts (except as otherwise excluded by the terms of this Final Judgment), teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; customer lists and addresses; all repair and performance records relating to the MSA Divestiture Assets; and all other records relating to the MSA Divestiture Assets reasonably required to permit the Acquirer to conduct a thorough due diligence review of and to operate the MSA Divestiture Assets. The MSA Divestiture Assets shall not include assets, wherever located, used exclusively or primarily in or in support of Level 3's provision of telecommunications services outside the Divestiture MSAs, including the provision of telecommunications services between MSAs.

Based on its investigation of the proposed transaction, the United States believes that the divestiture of the entirety of Level 3's telecommunications networks in each of the Divestiture MSAs will effectively replace the

[10] Webscale companies are those primarily engaged in the business of providing large amounts of data to end users through web-based services; they require facilities and infrastructure to create, store, and then transport that data across long distances.

competition that will be lost through this acquisition. Selling the MSA Divestiture Assets as an ongoing competitive business in each Divestiture MSA will provide the acquirer(s) with the ability and incentive to continue to invest in and expand the acquired business, replicating as closely as possible the competitive conditions in each of the Divestiture MSAs prior to the merger. The particular nature of the competitive problem—including a potential substantial lessening of competition for last-mile services in a large number of commercial buildings throughout each of the Divestiture MSAs—was such that a divestiture of fiber only to certain buildings would be insufficient to remedy the competitive problem and re-create a viable competitor; rather, a divestiture of the network assets throughout each MSA was appropriate in these circumstances.

The United States believes that having the acquirer operate as a completely separate competitive entity as quickly as possible is the most effective competitive outcome and expects that an acquirer with telecommunications experience will be able to do so within one year. However, in order to avoid unnecessary disruptions while the acquirer is setting up its business, at the option of the acquirer(s), defendants are also required to enter into a Transition Services Agreement for any services that are reasonably necessary for the acquirer(s) to maintain, operate, provision, monitor, or otherwise support the MSA Divestiture Assets, including any required back office and information technology services. This agreement will last for no more than twelve (12) months, although the United States may approve one or more extensions for a period of up to an additional twelve (12) months.

In addition, subject to certain conditions, upon closing of the divestiture sale in each of the Divestiture MSAs, defendants, for a period of two years or the expiration of the customer's contract (whichever is shorter), will release Level 3's customers with service locations in that MSA from their contractual obligations for those locations, including otherwise applicable termination fees, to enable the customers to select the acquirer as their telecommunications services provider. Each Level 3 customer who has locations in multiple MSAs will similarly be released from its contracts (including at its locations outside of the Divestiture MSAs) to allow it to switch to the acquirer, if the monthly recurring revenue Level 3 earns from that customer is greater within the Divestiture MSAs than from the aggregate of all locations outside those MSAs. Within fifteen business days of a divestiture in a Divestiture MSA, defendants will notify all MSA customers of the divestiture and of their options under the proposed Final Judgment. The acquirer will have the option to include its own customer notification with that of the defendants.

In requiring that customers be released from their contracts rather than requiring that customer contracts be divested along with the other assets, the United States is balancing the competitive benefits of the divestiture against the potential imposition of burdens on customers. For example, Level 3 service contracts in the Divestiture MSAs may include a combination of basic connectivity services and other value-added services, such as services that prioritize routing across a customer's network. The value-added services that an acquirer chooses to offer may differ somewhat from the value-added services offered by Level 3. Thus, divesting customer contracts in specific circumstances would either impose a burden on the customer to accept a different value-added service package than the one they initially bargained for, or would impose a burden on the acquirer to replicate the exact services in Level 3's customer contracts. Requiring that customers be released from their contracts for a defined period of time will, however, allow the acquirer to compete for all customers in each of the Divestiture MSAs immediately upon completion of the divestiture.

For a period of two years, defendants are also prohibited from initiating customer-specific communications to solicit any customers who have switched service to the acquirer(s), but can respond to inquiries from the customer or enter into negotiations with the customer at the customer's request. This strikes a balance between enabling an acquirer to establish its business while at the same time generally giving customers at least two meaningful alternatives. The provisions of the proposed Final Judgment allowing customers with locations in the Divestiture MSAs to switch their service to the acquirer(s) free of contractual penalties should, in these circumstances, be sufficient to provide the acquirer(s) with adequate business opportunities and revenue streams while at the same time maximizing customer choice and avoiding customer disruption.

Subject to the United States' approval, defendants may negotiate with each acquirer of MSA Divestiture Assets to lease back from that acquirer for a period of two years all lateral connections and metropolitan area network needed for defendants to support Level 3 customers that choose to remain customers of defendants. This will allow defendants to continue to provide service without interruption, at least until the defendants have time to transition those customers to its own facilities or make other arrangements.

B. Intercity Dark Fiber Assets

Under the proposed Final Judgment, defendants are also required to sell, to a single acquirer, IRUs for twenty-four strands of dark fiber on each of the Intercity Routes. The proposed Final Judgment requires that the Intercity Dark Fiber Assets be divested to a single acquirer because intercity dark fiber customers find it more efficient to deal with one fiber owner than to piece together networks from multiple owners. In addition, divesting all the Intercity Dark Fiber Assets to a single acquirer is most likely to result in the creation of a viable, competitive dark fiber provider, thereby replicating the pre-merger competitive market conditions. Twenty-four fiber strands will be sufficient to allow the acquirer to compete with the combined company on the overlap routes.

Defendants are also required to include all the associated rights necessary for the acquirer to resell the dark fiber to end users and to permit the acquirer, or any of its assignees, to light the fiber and use it to provide telecommunications services. The IRUs will have a term of twenty-five years with two five-year renewal options, giving the acquirer the option to control the fiber for up to thirty-five years.[11] The conveyance of intercity dark fiber via a long-term IRU is typical industry practice. This structure ensures that the grantee can use the fiber as it sees fit, but the fiber grantor remains responsible for handling the complexities of ownership, such as maintaining rights-of-way and repairing fiber cuts. The twenty-five year terms is also consistent with the industry practice, as purchasers of intercity dark fiber typically seek IRUs in the range of 10–30 years. If, however, new technologies emerge or the market shifts, the acquirer will have the flexibility to end its lease after 25 years if it no longer sees value in keeping these IRUs.

Defendants are also required to provide a contiguous network of fiber by ensuring that fiber on all of the Intercity

[11] These extensions will be at a price not to exceed 20% of the initial IRU fee. This provision ensures that defendants will not be able to charge exorbitant fees to discourage the acquirer from renewing.

Routes sharing an endpoint connect with one another or, where they do not connect, by constructing a connection to link them. Connecting the fibers together into one network is important because it will provide the acquirer with more attractive inventory, and, importantly, will provide a cross-country route appealing to intercity dark fiber customers that demand a path to carry their data between the dense population areas on the coasts.

The proposed Final Judgment ensures that the Intercity Dark Fiber Assets include all of the rights necessary for the acquirer both to resell the fiber to end users and to allow those end users to be able to light the fiber themselves. Although the Division expects the acquirer to sell some of the Intercity Dark Fiber Assets as dark fiber to end users, the acquirer also may want to sell lit services in conjunction with the dark fiber or use some of the fiber strands to support its own telecommunications infrastructure. This is permissible under the proposed Final Judgment; because sellers of dark fiber frequently sell such fiber in conjunction with lit services, the ability to use the Intercity Dark Fiber Assets to provide both lit services and dark fiber should help ensure that the acquirer will be an effective, viable competitor on the Intercity Routes. The acquirer must, however, have the intention and experience necessary to ensure that the divestiture of the Intercity Dark Fiber Assets will replace competition in the market for intercity dark fiber lost through the acquisition.

* * * * *

In the event that defendants do not accomplish the divestitures within the period prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States and approved by the Court to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the United States and, as appropriate, the Court setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as it deems appropriate, in order to carry out the purpose of the Final Judgment, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in all of the markets discussed above.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Scott A. Scheele, Chief, Telecommunications and Broadband Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 7000, Washington, DC 20530, *scott.scheele@usdoj.gov*.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against CenturyLink's acquisition of Level 3. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the markets for: (1) The provision of fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Divestiture MSAs, and (2) the sale of dark fiber on the Intercity Routes, as identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion as to the adequacy of the relief at issue); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable''); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[12]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other factors, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62; *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 151–52 (D.D.C. 2016) (considering the decree's clarity, sufficiency of compliance mechanisms, and third-party impact). With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest*.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[13] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *Iron Mountain,* 217 F. Supp. 3d at 151 (noting that a court should not reject the proposed remedies because it believes others are preferable); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case.'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.''' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also U.S. Airways,* 38 F. Supp. 3d at 75 (''[R]oom must be made for the government to grant concessions in the negotiation process for settlements.'' (quoting *SBC Commc'ns,* 489 F. Supp. 2d at 15)); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (''[A] court must simply determine 'whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable.''' (quoting *SBC Commc'ns,* 489 F. Supp. 2d at 15–16)); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also*

[12] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[13] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest''').

U.S. Airways, 38 F. Supp. 3d at 76 (''[A] court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act.''). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[14] ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 14, 2017.

Respectfully,

Scott Reiter, Trial Attorney, United States Department of Justice, Antitrust Division, Telecommunications and Broadband Section.

450 Fifth Street, NW., Suite 7000, Washington, DC 20530, Telephone: (202) 598–8796, Facsimile: (202) 514–6381, Email: *scott.reiter@usdoj.gov.*

CERTIFICATE OF SERVICE

I, Scott Reiter, hereby certify that on November 14, 2017, I caused copies of the foregoing Competitive Impact Statement to be served upon defendants CenturyLink, Inc. and Level 3 Communications, Inc. through the ECF system and by mailing the documents electronically to the duly authorized legal representatives of the defendants, as follows:

Counsel for CenturyLink, Inc.

Ilene Knable Gotts, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019, Phone: 212–403–1247, *ikgotts@wlrk.com.*

Counsel for Level 3 Communication, Inc.

J. Bruce McDonald, Jones Day, 717 Texas Avenue, Houston, TX 77002, Phone: 832–239–3822, *bmcdonald@jonesday.com.*

Scott Reiter,
Trial Attorney,
U.S. Department of Justice,
Antitrust Division, Telecommunications and Broadband Section,
450 Fifth St. NW., Suite 7000,
Washington, DC 20530,
Phone: 202–598–8796,
Fax: 202–514–6381,
Email: scott.reiter@usdoj.gov.

[FR Doc. 2017–25373 Filed 11–22–17; 8:45 am]

BILLING CODE P

[14] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (''The Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone.''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977 U.S. Dist. LEXIS 15858, at *22 (W.D. Mo. May 17, 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Employees' Compensation Act Medical Reports and Compensation Claims

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Federal Employees' Compensation Act Medical Reports and Compensation Claims,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 26, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201701-1240-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Federal Employees' Compensation Act (FECA) Medical Reports and Compensation Claims information collection. Forms within this collection are used to file claims for wage loss or permanent impairment due to a Federal employment-related injury and to obtain necessary medical documentation to determine whether a claimant is entitled to benefits under the FECA. This information collection has been classified as a revision, because the agency is clarifying questions related to tetanus, incorporating new guidance forms, and clarifying other questions and disclosures to ensure respondents understand what information is needed and what assistance and benefits are available. This information collection is authorized under 5 U.S.C. 8102.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not