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VIA ECFS

EX PARTE

March 10, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Applications Filed for the Transfer of Control of Level 3 Communications, Inc. to CenturyLink, Inc.*, WC Docket No. 16-403

Dear Ms. Dortch:

Windstream Services, LLC (“Windstream”) submits this letter to support and supplement the reply comments submitted in the above-referenced proceeding by Frontier Communications Corporation (“Frontier”).¹ Like Frontier, Windstream has found that Level 3 in particular has been unreasonably refusing to pay or delaying payment on millions of dollars for services rendered by Windstream. In addition, since the announcement of the acquisition, Windstream has received a significant number of rate increase notices from Level 3 that are inconsistent with the company’s past practices.

Like Frontier, Windstream is concerned that the combined entity will use its augmented scale and market power to engage increasingly in these and other practices that are contrary to the public interest and fair and reasonable competition, and are detrimental to Windstream’s continued effort to invest in its network to provide robust and affordable broadband service, particularly in rural and high-cost areas. As Frontier notes, “[a]bsent conditions aimed at remedying these practices, the Commission should conclude that the proposed transaction will substantially frustrate or impair the Commission’s implementation or enforcement of Section 201,” 47 U.S.C. § 201, which requires carriers to engage in just and reasonable practices.²

Therefore, Windstream agrees with Frontier that the Commission should adopt conditions to ensure that Level 3 and the combined entity cannot engage in unreasonable bill payment practices. In addition, the Commission should adopt conditions to prevent Level 3 and the combined entity from using their market power in the business data services market to engage in extortionate price increases.

¹ Reply Comments of Frontier Communications Corp., WC Docket No. 16-403 (Feb. 7, 2017).

² *Id.* at 5.

Level 3's Bill Payment Practices

Like Frontier, Windstream has found that Level 3 has been unreasonably refusing to pay or delaying payment on millions of dollars for services rendered. Level 3 disputes bills at a rate that exceeds that of other purchasers of Windstream's services. After Windstream evaluates and rejects a meritless dispute claim, Level 3 will delay payment by responding that it needs to review the claim again but then fail to provide any additional supporting documentation. Level 3 will repeatedly ask the same clarifying questions in similar disputes, apparently in an attempt to slow-roll the resolution process. And Level 3 continues erroneously to withhold payment on resolved disputes, claiming process errors that seem never to get resolved. In short, it appears to be a standard business practice of Level 3 to dispute bills and delay payment, holding on to the cash as long as possible to attain cash flow guidance targets provided to investors and analysts.

Also like Frontier, Windstream has experienced some improvement in Level 3's practices since the announcement of the CenturyLink transaction and submission of applications to the Commission. However, Windstream has concerns that this better behavior will not continue voluntarily if the transaction is approved. Moreover, Windstream does not at present have concerns with CenturyLink's bill payment practices, but Windstream is concerned that the combined company, which will have greater scale and increased market power, will assume the more problematic practices of Level 3.

Level 3's Recent Rate Increases

Just as Level 3 purchases services from Windstream, particularly where Level 3 is serving a customer in Windstream's incumbent service area, Windstream has extensive agreements with Level 3 governing the purchase by Windstream of last-mile services, backbone transmission and long-haul transport. Since the announcement of the CenturyLink-Level 3 transaction, Windstream has received notification from Level 3 of numerous rate increases for circuits currently being used by Windstream that are no longer under a term commitment. While these increases may not be against the terms of the contract, they are inconsistent with Level 3's past practice, which has been to continue billing at the term contract rates as long as the circuit is in service.

Carriers typically modify special access tariffs annually to reflect changes to TDM input rates, and these changes typically include both rate increases and decreases. Also, typically Level 3 and CenturyLink will not reduce rates on an existing circuit when the term expires and when new circuits are being offered at a lower rate. Thus, Level 3 enacting only rate increases and applying the increases to existing circuits is contrary to usual practice and indicates that Level 3 is exercising its market power to engage in extortionate pricing. Following this transaction, the combined entity would have even more market power to engage in such price increases and other practices that may be in violation of Section 201.

Requested Relief

If the Commission decides to grant the transaction, it should do so only with conditions to ensure that the combined entity does not use its scale and market power to engage increasingly in these and other practices that are contrary to the public interest, convenience, and necessity.³ In particular, to alleviate unreasonable bill payment practices, the Commission should mandate that, as a condition of the transaction, (1) Level 3 is required to pay immediately all outstanding amounts as required by the service providers' applicable tariffs or other contracts; (2) Level 3 or the combined entity must remain current on all billed charges; and (3) the combined entity must adhere to CenturyLink's best practices. In addition, to prevent the combined entity from using its market power to raise prices unreasonably, the Commission should mandate that, as a condition of the transaction, (1) the combined entity must continue to provide the contract rate for a facility purchased under contract, even after the initial purchase term expires; and (2) the combined entity must permit wholesale customers to continue to lease these facilities on a month-to-month basis after the initial term has been fulfilled.

Sincerely yours,

/s/ Malena F. Barzilai

Malena F. Barzilai

cc: Terri Natoli
Brian Hurley
Jim Bird
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Linda Ray

³ See, e.g., *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131 ¶ 18 (2015) (citing 47 U.S.C. § 310(d); 47 C.F.R. § 25.119).