

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

\_\_\_\_\_  
In the Matter of )

**CenturyLink, Inc.** )

Transferor, )

and )

**Unite Private Networks, LLC** )

Transferee, )

Joint Application for Consent to Assignment )  
of Assets Pursuant to Section 214 of the )  
Communications Act of 1934, as amended )  
\_\_\_\_\_ )

WC Docket No. 18-\_\_\_\_\_

**JOINT APPLICATION FOR CONSENT TO ASSIGNMENT OF ASSETS**

Pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and Sections 63.01, 63.03, 63.04 and 63.24 of the Commission’s Rules, 47 C.F.R. §§ 63.01, 63.03, 63.04, 63.24, CenturyLink, Inc. (“CenturyLink”) and Unite Private Networks, LLC (“UPN”), (together “Applicants”), jointly request Commission approval to consummate a transaction whereby UPN will acquire certain assets of CenturyLink (the “Transaction”) pursuant to the requirements of the Final Judgment issued in connection with CenturyLink’s acquisition of Level 3 Communications (“Level 3”), which was consummated on November 1, 2017.<sup>1</sup> A copy of the Final Judgment is attached as Exhibit A.

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<sup>1</sup> Final Judgment, *United States v. CenturyLink, Inc. and Level 3 Communications, Inc.*, 1:17-cv-02028-KBJ (March 6, 2018) (“Final Judgment”).

The assets that are the subject this Joint Application (the “Albuquerque MSA Divestiture Assets”) currently are used exclusively or primarily to support the provision of telecommunications services to customer locations in the Metropolitan Statistical Area (“MSA”) of Albuquerque, New Mexico.<sup>2</sup> The Albuquerque MSA Divestiture Assets and the requirements for their divestiture as described in full in Sections II and IV of the Final Judgment.

As explained more fully herein, the Transaction will enhance competition and thus benefit consumers. As an initial matter, the Transaction is intended to fulfill the commitments and obligations of CenturyLink and Level 3 to the Department of Justice (“DOJ”). In other words, it is the outcome of a competitive assessment by the DOJ. Indeed, the DOJ has notified CenturyLink in writing that it does not object to the sale of the Albuquerque MSA Divestiture Assets to UPN, thereby implicitly acknowledging that the Transaction will enhance, not diminish, competition in the relevant MSA.<sup>3</sup> By acquiring the Albuquerque MSA Divestiture Assets, UPN immediately will enhance its ability to provide high-quality, fiber-based telecommunications and other services throughout the Albuquerque MSA. As a consequence, Commission approval of the Transaction will bring immediate pro-competitive benefits to this market, thereby benefitting consumers.

At the same time, the Transaction will not adversely affect existing customers that are served with these assets. Under the terms of the Final Judgment, customers currently being served by the Albuquerque MSA Divestiture Assets will be notified of the Transaction, released

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<sup>2</sup> The MSA Divestiture Assets that are the subject of this Joint Application do not include other assets described in the Final Judgment that are used exclusively or primarily to support the provision of telecommunications services to customer locations in the Boise, Idaho, and Tucson, Arizona, MSAs. Those assets are or will be the subject of unrelated Applications that involve other buyers.

<sup>3</sup> The DOJ notified counsel for CenturyLink of its approval on March 9, 2018.

from contractual obligations for any otherwise applicable early termination fees, and continue to receive service without interruption. In other words, existing customers are expected only to benefit from the Transaction.

To facilitate the seamless transition of the Albuquerque MSA Divestiture Assets to UPN, the parties have entered into a Transition Services Agreement pursuant to which CenturyLink will continue to maintain, operate, provision, monitor and otherwise support the Albuquerque MSA Divestiture Assets for approximately one year post-transfer. CenturyLink also has committed, pursuant to the terms of the Final Judgment, to take other actions — such as to use reasonable, best efforts to obtain third-party consents necessary to transfer, assign, or sublease to UPN fiber leases that are part of the Albuquerque MSA Divestiture Assets — to facilitate the seamless transition of the Albuquerque MSA Divestiture Assets to UPN. In short, approval of the Transaction will facilitate a seamless transition that will lead to more competition for existing and prospective customers without adverse consequences, ultimately benefitting all consumers.

Pursuant to the requirements of Section 63.04 of the Commission's rules, this Joint Application provides a description of the Applicants, a summary of the Transaction, a Public Interest Statement, and all additional information required to demonstrate that the Transaction satisfies applicable regulatory requirements and is in the public interest. Because this Joint Application is the only regulatory approval required to effectuate the Transaction, thus bringing its myriad benefits to consumers, the Applicants respectfully request that the Commission consider and approve it expeditiously.

In support of this Application, Applicants provide the following information:

## **I. Description of the Applicants**

### **A. Transferor—CenturyLink**

CenturyLink is a global communications, hosting, cloud, and IT services company. CenturyLink provides broadband, voice, video, data and managed services over a 450,000-route-mile U.S. fiber network and a 360,000-route-mile international transport network. CenturyLink also offers network and data systems management, Big Data analytics and IT consulting. CenturyLink's operating subsidiaries are authorized by the FCC and state public utility commissions to provide telecommunications services in all 50 states and the District of Columbia, as well as Puerto Rico and the U.S. Virgin Islands.

In addition, CenturyLink offers communications services, including local and long-distance voice, wholesale local network access, high-speed internet, and information, entertainment, and fiber transport services through copper and fiber networks, to consumers and businesses in 50 states. CenturyLink also provides high-speed internet access services and data transmission services. In certain local and regional markets, CenturyLink provides telecommunications services as a competitive local exchange carrier, offers security monitoring, and provides other communications, professional, business, and information services. CenturyLink operates a state-of-the-art fiber transport system, which provides wholesale and retail fiber-based transport services to its customers. CenturyLink also operates a wholesale business, selling access to its network to other carriers, cable companies, internet service providers, and resellers, and also sells database services on a wholesale basis.

### **B. Transferee—UPN**

UPN is a non-dominant carrier that provides domestic telecommunications and broadband services over more than 8,500 fiber route miles to 5,300 on-net buildings for customers in Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas,

Kentucky, Missouri, Montana, Nebraska, New Mexico,<sup>4</sup> Ohio, Oklahoma, Texas, Virginia, Washington, Wisconsin, and Wyoming.<sup>5</sup> UPN's customers include schools, local and state governments, carriers, data centers, hospitals, and enterprise customers. UPN does not offer residential services. UPN is majority owned and controlled by Cox Communications, Inc. ("Cox"). Cox and its affiliates provide domestic and international telecommunications services, broadband service, and video service in eighteen states, serving more than six million customers in the residential, small and medium business and enterprise markets.<sup>6</sup> Cox does not provide cable or telecommunications service anywhere in New Mexico.<sup>7</sup> Cox is a non-dominant carrier in both the domestic and international service markets across its footprint and is not affiliated with any dominant carrier. Cox is authorized by the Commission to provide domestic and international common carrier services.<sup>8</sup>

## **II. Description of the Transaction**

On October 30, 2017, the Commission granted applications filed by CenturyLink and

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<sup>4</sup> UPN holds a certificate issued by the New Mexico Public Regulation Commission to provide competitive local exchange services, however UPN neither currently serves customers nor has deployed fiber in New Mexico.

<sup>5</sup> UPN also holds an authorization to provide International Services pursuant to Section 214. *See* ITC-214-20180126-00021 (issued Feb. 23, 2018).

<sup>6</sup> Cox has service areas in Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Massachusetts, Missouri, Nebraska, Nevada, Ohio, Oklahoma, Rhode Island, and Virginia. Cox provides video service, but not telecommunications service, in North Carolina.

<sup>7</sup> Because Cox is not a cable operator in any franchise area in Albuquerque, Section 652 of the Communications Act is not applicable. *See* 47 U.S.C. § 572 (limiting the ability of a cable operator or its commonly-owned affiliates to acquire, directly or indirectly, more than a ten percent financial interest in a local exchange carrier providing telephone exchange service *in the cable operator's franchise area*).

<sup>8</sup> *Application Granted for the Transfer of Control of Unite Private Networks, LLC and Unite Private Networks-Illinois, LLC to Cox Communications, Inc.*, Public Notice, 31 FCC Rcd. 11758 (Wireline Comp. Bur. 2016).

Level 3 seeking approval to transfer control to CenturyLink various licenses and authorizations held by operating subsidiaries of Level 3 (the “Level 3 Acquisition”).<sup>9</sup> In connection with the Level 3 Acquisition, the Department of Justice (“DOJ”) issued the Final Judgment, which orders and directs CenturyLink to divest, among other things, the Albuquerque MSA Divestiture Assets.<sup>10</sup> These assets are among the assets described more fully in Sections II and IV of the Final Judgment and, for convenience, are summarized in Exhibit B to this Joint Application. In general, these assets (acquired from Level 3) are used exclusively or primarily to support the provision of telecommunications services to customer locations in three MSAs: (1) Albuquerque, New Mexico, (2) Boise City-Nampa, Idaho, and (3) Tucson, Arizona.<sup>11</sup>

On February 1, 2018, CenturyLink (through its wholly-owned subsidiary, Level 3 Parent, LLC),<sup>12</sup> entered into an Asset Purchase Agreement (the “Agreement”) with UPN to sell the Albuquerque MSA Divestiture Assets to UPN, thus facilitating CenturyLink’s compliance with the divestiture requirements of the Final Judgment. The transfer of the Albuquerque MSA Divestiture Assets to UPN is the subject of this Joint Application.<sup>13</sup>

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<sup>9</sup> See *Applications of Level 3 Commc’ns, Inc. & CenturyLink, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd. 9581 (2017) (“*Level 3 Transaction Order*”).

<sup>10</sup> See Final Judgment at 2, 5-7.

<sup>11</sup> See *Justice Department Requires Divestitures in Order for CenturyLink to Proceed with Its Acquisition of Level 3 Communications*, Press Release (Oct. 3, 2017), at <https://www.justice.gov/opa/pr/justice-department-requires-divestitures-order-centurylink-proceed-its-acquisition-level-3>.

<sup>12</sup> Level 3 Parent, LLC is a Delaware limited liability company formerly known as Level 3 Communications, Inc.

<sup>13</sup> The assets (acquire11758d from Level 3) used exclusively or primarily to support the provision of telecommunications services to customer locations in the Boise, Idaho, and Tucson, Arizona, MSAs are or will be the subject of unrelated Applications that involve other buyers. See *supra*, note 2.

### **III. Public Interest Benefits**

The proposed Transaction will serve the public interest. As an initial matter, it is worth noting that the purpose of the proposed Transaction is to effectuate the requirements of the Final Judgment. In other words, the Transaction is being undertaken to comply with CenturyLink's and Level 3's commitments to the DOJ and their related obligations under applicable law. Moreover, the proposed Transaction is the outcome of a competitive assessment by the DOJ, the goal of which is to ensure that competition in the provision of fiber-based telecommunications and other services to customers in the Albuquerque MSA remains vibrant. Indeed, the DOJ has assessed the qualifications and position of UPN and has confirmed to CenturyLink in writing pursuant to the terms of the Final Judgment that UPN is an acceptable buyer, implicitly endorsing the notion that the sale of the Albuquerque MSA Divestiture Assets to UPN will enhance, not diminish, competition in the market.<sup>14</sup>

The Transaction will bring immediate benefits to competition, in particular, facilities-based competition in the Albuquerque MSA. Although UPN already has plans to build a fiber network in the Albuquerque MSA, it has not begun construction yet. By purchasing the Albuquerque MSA Divestiture Assets, UPN can accelerate its entry as a provider of high-quality, fiber-based telecommunications, broadband and other services throughout the Albuquerque MSA. The proposed Transaction will enable UPN to begin providing immediate service to customers already connected to the Level 3 network in Albuquerque, as well as potential customers in close proximity to the network that can be reached efficiently.

The Commission routinely and consistently has held the development of facilities-based competition in the provision of telecommunications and broadband services to be among its most

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<sup>14</sup> See Final Judgment at 20.

significant policy objectives.<sup>15</sup> By immediately enhancing UPN’s ability to provide fiber-based services in the Albuquerque MSA, the Transaction will help realize this crucial objective.

UPN currently does not serve any customers in the Albuquerque MSA and has no fiber network in Albuquerque. Thus, there is no competitive overlap at all between UPN and the Albuquerque Divestiture MSA Assets. UPN has planned a fiber deployment in the Albuquerque MSA related to its award of a contract to provide Wide Area Network services to the Albuquerque School District. The fact that UPN is majority-owned by Cox, a cable operator, should have no bearing on these conclusions. Cox has no operations in the Albuquerque market or anywhere else in New Mexico.<sup>16</sup>

At the same time, the proposed Transaction will also benefit customers that currently are being served using the Albuquerque MSA Divestiture Assets. Under the terms of the Final Judgment, customers currently served using the Albuquerque MSA Divestiture Assets will be notified of the Transaction and released from applicable early termination fees.<sup>17</sup> As a consequence, these customers will be able to select their future service provider of choice and continue to receive service on a seamless and uninterrupted basis. To facilitate this seamless customer experience, the Applicants have entered into a Transition Services Agreement pursuant to which CenturyLink will continue to maintain, operate, provision, monitor and otherwise support the Albuquerque MSA Divestiture Assets for approximately one year post-transfer. CenturyLink also has committed, pursuant to the terms of the Final Judgment, to take other actions — such as use best

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<sup>15</sup> See, e.g., *Business Data Services in an Internet Protocol Environment*, 32 FCC Rcd. 3459, 3581 (2017) (stating that the Commission has a “longstanding policy of ‘encourag[ing] the innovation and investment that come from facilities-based competition.’”) (quoting *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd. 2533, 2535 (2005)).

<sup>16</sup> See *supra*, note 7.

<sup>17</sup> See generally, Final Judgment at Section IV(K), (L) and (M).



efforts to obtain third-party consents necessary to transfer, assign, or sublease to UPN fiber leases that are part of the Albuquerque MSA Divestiture Assets — to facilitate the seamless transition of the Albuquerque MSA Divestiture Assets to UPN.

The public interest findings that the Commission made when it approved the Level 3 Acquisition were premised in part on the sale of the MSA Divestiture Assets,<sup>18</sup> and the Final Judgment is premised on DOJ’s conclusion that the divestiture of these assets is in the public interest.<sup>19</sup> The DOJ has determined that the sale of the Divestiture Assets to UPN would promote competition, and the Commission has every reason to find that UPN possesses the requisite financial, managerial, and technical qualifications to own and control the Albuquerque MSA Divestiture Assets.

After closing the proposed Transaction and acquiring the Albuquerque MSA Divestiture Assets, UPN will be able to more quickly provide schools, government, carrier and enterprise customers in the Albuquerque market with access to a fiber network with a broad geographic reach throughout the central United States. As a result, the proposed Transaction will significantly strengthen UPN’s ability to compete with the ubiquitous services offered by CenturyLink and local cable operators in the Albuquerque market as well as regionally.

In short, UPN’s ownership and control of the MSA Divestiture Assets will facilitate the continued provision of high-quality telecommunications and other services to customers in the

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<sup>18</sup> See *Level 3 Transaction Order*, 32 FCC Rcd. at 9588-89 ¶ 17 (“Based on our evaluation of the record, with the conditions we impose herein and the divestitures and other conditions agreed to by the Applicants in the DOJ Consent Decree, we find that the proposed Transaction is unlikely to result in any material public interest harm in any geographic area where the Applicants operate.”).

<sup>19</sup> See Final Judgment at 24 (“Entry of this Final Judgment is in the public interest.”).

relevant MSA and expand competition with incumbent providers already in the market, including both the ILEC and cable operator. The Commission therefore should find that the Transaction is in the public interest and approve it expeditiously.

#### **IV. Information Required by Section 63.04 of the Commission's Rules**

The following information is provided to address the requirements of Section 63.04(a):

**(1) Name, address and telephone number of each Applicant**

**(a) Transferor—CenturyLink**

CenturyLink, Inc.  
100 CenturyLink Drive  
Monroe, LA 71203  
Tel: (877) 837-5738

**(b) Transferee—UPN**

Unite Private Networks, LLC  
7200 NW 86th Street, Suite M  
Kansas City, MO 64153  
Tel: (816) 260-1868

**(2) Government, state or territory under the laws of which each corporate or partnership Applicant is organized**

**(a)** CenturyLink is a Louisiana corporation.

**(b)** UPN is a Delaware limited liability company.

**(3) Name, title, post office address, and telephone number of the officer or contact point of each Applicant to whom correspondence concerning the Application is to be addressed**

**(a) CenturyLink**

Yaron Dori  
Matt DelNero  
Ani Gevorkian  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, N.W.  
Washington, DC 20001

Tel: (202) 662-6000  
[ydori@cov.com](mailto:ydori@cov.com)  
[mdelnero@cov.com](mailto:mdelnero@cov.com)  
[agevorkian@cov.com](mailto:agevorkian@cov.com)

With a copy to:

Craig Brown  
Senior Associate General Counsel  
CenturyLink, Inc.  
930 15th Street  
Denver, CO 80202  
Tel: (303) 992-2503  
[craig.j.brown@centurylink.com](mailto:craig.j.brown@centurylink.com)

**(b) UPN**

Tamar Finn  
Joshua M. Bobeck  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2541  
Tel: (202) 739-3000  
Fax: (202) 739-3001  
[tamar.finn@morganlewis.com](mailto:tamar.finn@morganlewis.com)  
[joshua.bobeck@morganlewis.com](mailto:joshua.bobeck@morganlewis.com)

With a copy to:

Matthew Wiltanger  
General Counsel  
Unite Private Networks, LLC  
7200 NW 86th Street, Suite M  
Kansas City, MO 64153  
Tel: (816) 533-4133  
[matt.wiltanger@upnfiber.com](mailto:matt.wiltanger@upnfiber.com)

**(4) Name, address, citizenship and principal business of any person or entity that directly or indirectly owns at least ten percent of the equity of the Transferor or Transferee**

The proposed Transaction does not involve a change in the ownership of either of the Applicants. Currently, and upon consummation of the Transaction, no single entity will hold a direct or indirect 10 percent or greater ownership interest in CenturyLink.

Currently, and post-Transaction, the following persons, directly or indirectly, own or control 10% or greater of Transferee UPN.<sup>20</sup>

**(a) The following entity wholly owns Transferee UPN:**

**(i) Name: Fiber Platform, LLC**

Address: 6205-A Peachtree Dunwoody Road  
Atlanta, GA 30328  
Citizenship: U.S. (Delaware)  
Principal Business: Investments  
% Interest: 100% (directly in UPN)

**(b) The following persons or entities own or control a 10% or greater interest in UPN through Fiber Platform, LLC**

**(ii) Name: Fiber Platform Holdings, LLC**

Address: 6205-A Peachtree Dunwoody Road  
Atlanta, GA 30328  
Citizenship: U.S. (Delaware)  
Principal Business: Investments  
% Interest: 34.8% (directly in Fiber Platform, LLC)

**(iii) Name: Fiber Platform Blocker, Inc.**

Address: 6205-A Peachtree Dunwoody Road  
Atlanta, GA 30328  
Citizenship: U.S. (Delaware)  
Principal Business: Investments  
% Interest: 31.5% (directly in Fiber Platform, LLC)

**(iv) Name: REP UPN II, L.P.**

Address: 150 North College Street, Suite 2500  
Charlotte, NC 28202  
Citizenship: U.S. (Delaware)  
Principal Business: Investments  
% Interest: 20.8% (directly in Fiber Platform, LLC)

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<sup>20</sup> Unless otherwise indicated, the ownership interests provided herein represent both equity and voting interests.

**(c) The following entities and persons own or control a 10% or greater interest in UPN through Fiber Platform Holdings, LLC and Fiber Platform Blocker, Inc.:**

**(v) Name: Cox Communications, Inc.**

Address: 6205-A Peachtree-Dunwoody Road  
Atlanta, GA 30328  
Citizenship: U.S. (Delaware)  
Principal Business: Communications  
% Interest: 100% (indirectly, as 100% owner of Fiber Platform Holdings, LLC and Fiber Platform Blocker, Inc.)

**(vi) Name: Cox Enterprises, Inc. (“CEI”)**

Address: 6205-A Peachtree-Dunwoody Road  
Atlanta, GA 30328  
Citizenship: U.S. (Delaware)  
Principal Business: Conglomerate  
% Interest: 100% (indirectly, as (1) 95.4% direct owner of Cox Communications, Inc. and (2) 100% direct owner of Cox DNS, Inc., which directly owns 4.6% of Cox Communications, Inc.)

Voting control of CEI is vested in the Cox Family Voting Trust, which holds 100% of the voting stock of CEI. The trustees of the Cox Family Voting Trust, each U.S. citizens that can be reach at the same address as CEI, are: James C. Kennedy; Alexander Taylor; and John M. Dyer.

**(d) The following entities and persons own or control a 10% or greater interest in UPN through CEI:**

**(vii) Name: Trailsend Ventures, LLC (“Trailsend”)**

Address: 6205-A Peachtree-Dunwoody Road  
Atlanta, GA 30328  
Citizenship: U.S. (Delaware)  
Principal Business: Investments  
% Interest: 29.49% (indirectly, as 29.49% direct owner of CEI)

The following persons, as trustees of multiple trusts that in aggregate own more than 50% of Trailsend,<sup>21</sup> may be considered to control indirectly 10 percent or more of the equity of CEI: James C. Kennedy; James C. Kennedy, Jr.; and Daniel Mosley. Each of these trustees is a U.S. citizen and

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<sup>21</sup> No individual trust indirectly owns 10% or more of CEI through its direct ownership of Trailsend.

can be reached at 6205-B Peachtree-Dunwoody Road, Atlanta, GA 30328. To Applicant's knowledge, no other person or entity owns or controls, directly or indirectly, a 10% greater interest in CEI through Trailsend.

**(viii) Name: JKR Ventures, L.P. ("JKR")**

Address:	6205-A Peachtree-Dunwoody Road Atlanta, GA 30328
Citizenship:	U.S. (Delaware)
Principal Business:	Investments
% Interest:	23.28% (indirectly, as 23.28% direct owner of CEI)

The following persons, as trustees of multiple trusts that in aggregate own more than 50% of JKR,<sup>22</sup> may be considered to control indirectly 10 percent or more of the equity of CEI: Margaretta J. Taylor; Katharine J. Rayner; James C. Chambers; and Daniel Mosley. Each of these trustees is a U.S. citizen and can be reached at 6205-B Peachtree-Dunwoody Road, Atlanta, GA 30328. To Applicant's knowledge, no other person or entity owns or controls, directly or indirectly, a 10% greater interest in CEI through Trailsend.

**(e) The following entities and persons own or control a 10% or greater interest in UPN through REP UPN II, L.P. (and its affiliates):**

**(ix) Name: Ridgemont Equity Management II, LP ("REM II LP")**

Address:	150 North College Street, Suite 2500 Charlotte, NC 28202
Citizenship:	U.S. (Delaware)
Principal Business:	Investments
% Interest:	21.1% (indirectly, as the General Partner of REP UPN II, L.P. and of Ridgemont Affiliates II-B-L.P., which directly owns 0.2% of Fiber Platform, LLC)

The general partner of REM II LP is Ridgemont Equity Management II, LLC ("REM II LLC"), a Delaware limited liability company located at the same address and whose principal business is investments. No limited partner of REM II LP owns or controls 10% or more of Fiber Platform through REM II LP.

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<sup>22</sup> No individual trust indirectly owns 10% or more of CEI through its direct ownership of JKR.

No member of REM II LLC indirectly controls 10% or more of Fiber Platform, LLC through REM II LLC.<sup>23</sup> REM II LLC is controlled by its management committee comprised of: J. Travis Hain,<sup>24</sup> Walker L. Poole, Robert L. Edwards, Jr., George E. Morgan, III, John Shimp, Scott R. Poole and John J. Purcell all of whom are U.S. citizens.<sup>25</sup> All of these individuals may be reached at 150 North College Street, Suite 2500, Charlotte, NC 28202.

No other individual or entity owns or controls a 10% or greater direct or indirect interest in UPN.

**(5) Certification by Transferee pursuant to 47 C.F.R. §§ 1.2001-1.2003 that no party to the Application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 583**

The Applicants certify, pursuant to 47 C.F.R. §§ 1.2001-1.2003, that to the best of their knowledge, information, and belief, no party to this Application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862a.

**(6) Description of the Transaction**

See Section II of this Application, above.

**(7) Description of the Geographic Areas in Which the Transferor and Transferee Offer Domestic Telecommunications Services, and What Services Are Provided in Each Area**

See Section I of this Application, above.

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<sup>23</sup> No individual member of REM II LLC owns 50% or more of the membership interests of REM II LLC.

<sup>24</sup> Mr. Hain also owns an indirect interest of approximately 12 percent in Fiber Platform, LLC through (1) REM II LP, REM II LLC and other affiliated funds, which affiliated funds have less than a 10 percent indirect interest in Fiber Platform, LLC each, and their general partners, and (2) as a trustee/beneficiary of trusts with interests in REM II LP and another affiliated fund, which indirectly has less than a 10 percent interest in Fiber Platform, LLC.

<sup>25</sup> Mr. Hain, Mr. Poole, Mr. Edwards, Mr. Morgan and Mr. Shimp are also members of the six-person management committee for another entity that indirectly controls less than 10 percent interest in Fiber Platform, LLC.

**(8) Streamlined processing**

The Applicants recognize that this Application, on its face, is not eligible for streamlined processing under Section 63.03(b) of the Commission's rules and the Applicants are not expressly requesting streamlined treatment of their Joint Application at this time. The Applicants believe, however, that given the pro-competitive benefits of the Transaction, the analysis by the Commission approving the Level 3 Acquisition, the DOJ analysis in requiring the MSA divestiture and the absence of countervailing considerations, the Commission could subject the Joint Application to streamlined treatment pursuant to the Commission's authority to do so on a case-by-case basis.<sup>26</sup> If the Commission declines to treat this Application as streamlined, the Applicants respectfully request that the Commission consider and approve the Transaction as expeditiously as possible.

**(9) Other Commission Applications Related to This Transaction**

There are no other Commission applications related to this Transaction, and the Applicants do not intend to file other related applications.<sup>27</sup>

**(10) Considerations Because of Imminent Business Failure**

There is no imminent business failure at this time and the parties do not request special considerations.

**(11) Identification of any separately-sought waiver requests**

The Applicants are not requesting any waivers.

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<sup>26</sup> See *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 FCC Rcd. 5517, 5535 ¶ 34 (2001) (noting that any application may be entitled to streamlined treatment under the Commission's case-by-case approach).

<sup>27</sup> *But see supra*, note 2.



**(12) Public Interest Statement**

See Section III of this Application, above, for a statement demonstrating how expeditious grant of the Application will serve the public interest, convenience and necessity.

**V. Administrative Matters**

**A. Ex Parte Status**

The Applicants request that the Commission treat this proceeding as permit-but-disclose pursuant to Section 1.1206 of the Commission's rules. The public interest in expeditiously considering this Application and associated submissions would be served by the flexibility permitted by permit-but-disclose procedures.

**VI. Conclusion**

For the foregoing reasons, the Applicants respectfully submit that that the public interest, convenience, and necessity would be served by expeditious grant of this Joint Application.

Respectfully submitted,

/s/ Yaron Dori

Stacey W. Goff  
Executive Vice President and  
General Counsel  
CenturyLink, Inc.  
100 CenturyLink Drive  
Monroe, LA 71203  
(877) 837-5738

Yaron Dori  
Matt DelNero  
Ani Gevorkian  
Covington & Burling LLP  
One City Center  
850 Tenth Street, N.W.  
Washington, DC 20001  
(202) 662-6000  
[ydori@cov.com](mailto:ydori@cov.com)  
[mdelnero@cov.com](mailto:mdelnero@cov.com)  
[agevorkian@cov.com](mailto:agevorkian@cov.com)

*Counsel for CenturyLink, Inc.*

/s/ Joshua M. Bobeck

Tamar Finn  
Joshua M. Bobeck  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2541  
202-739-3000 (tel)  
202-739-3001 (fax)  
[tamar.finn@morganlewis.com](mailto:tamar.finn@morganlewis.com)  
[joshua.bobek@morganlewis.com](mailto:joshua.bobek@morganlewis.com)

Matthew Wiltanger  
General Counsel  
Unite Private Networks, LLC  
7200 NW 86th Street, Suite M  
Kansas City, MO 64153  
816-533.4133 (tel)  
[matt.wiltanger@upnfiber.com](mailto:matt.wiltanger@upnfiber.com)

*Counsel for Unite Private Networks, LLC*

Dated: March 14, 2018

**EXHIBIT A**  
**Final Judgment**

**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. 17-2028

**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 Divestiture 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 may be 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 reports contains information that the Divestiture Trustee deems confidential, such reports 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.

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

Date: March 6, 2018

Ketanji Brown Jackson  
Ketanji Brown Jackson  
United States District Judge

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## 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

Route	Origin Gateway Location Address	Termination Gateway Location Address
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



**EXHIBIT B**  
**Summary of MSA Divestiture Assets**

The Final Judgment defines the Divestiture Assets that are the subject of this Transaction as the “MSA Divestiture Assets.” The Final Judgment’s definition of “MSA Divestiture Assets” and other defined terms relevant to the definition of “MSA Divestiture Assets” are set forth below.

“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 Divestiture MSA currently owned by Level 3 unless and until the customer chooses the Acquirer as its supplier pursuant to [the Final Judgment] 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 [other processes specified in the Final Judgment].”



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

“Lateral Connections” 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.”

“Metropolitan Area Network” is defined as “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.”

“Gateway Location(s)” means “a facility in or near an MSA where intercity fiber terminates and connects with a Metropolitan Area Network and/or other intercity fiber.”

“Majority MSA Customer” 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.”

“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.”

“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.”

“MSA” means “Metropolitan Statistical Area, as defined by the Office of Management and Budget.”


“Acquirer” refers to Unite Private Networks, LLC

## Verifications

## VERIFICATION

I, Stacey W. Goff, hereby declare that I am Executive Vice President, Chief Administrative Officer, General Counsel, and Secretary of CenturyLink, Inc.; that I am authorized to make this Verification on behalf of CenturyLink, Inc.; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of March, 2018.

  
\_\_\_\_\_  
Stacey W. Goff  
Executive Vice President, Chief Administrative  
Officer, General Counsel, and Secretary  
CenturyLink, Inc.

## VERIFICATION

I, Matthew Wiltanger, state that I am General Counsel of Unite Private Networks, LLC ("Transferee"); that I am authorized to make this Verification on behalf of Transferee and its subsidiaries; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to Transferee are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of February 2018.



Matthew Wiltanger  
General Counsel  
Unite Private Networks, LLC