

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
Level 3 Communications, Inc., Transferor,)
and CenturyLink, Inc., Transferee,)
Consolidated Application for Consent to Transfer) WC Docket No. 16-403
Control of Domestic and International Authorizations)
Pursuant to Section 214 of the Communications Act of)
1934, As Amended.)
_____)

**LATE-FILED COMMENTS OF THE
CALIFORNIA EMERGING TECHNOLOGY FUND**

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March 22, 2017

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The California Emerging Technology Fund (CETF) hereby late files comments in the above-referenced docket relating to the proposed transfer of control of Level 3 Communications to CenturyLink, Inc. CETF only recently learned of this proposed merger and its impacts on California, and was not able to retain counsel and timely file comments by the pleading cycle set in the Public Notice, DA 16-1435, dated December 21, 2016. CETF respectfully requests that the FCC consider its comments albeit filed late on the proposed merger.

I. Introduction

CETF is a statewide non-profit organization with the mission to close the Digital Divide in California. CETF was founded as a public benefit from the mergers of SBC-AT&T and Verizon-MCI approved by the California Public Utilities Commission (CPUC) in 2015. CETF studies and addresses the challenges of both “supply” (deployment) and “demand” (adoption) of technologies enabled by broadband. In pursuing its mission, CETF has participated through public comment or as an official party in most major corporate consolidations in the broadband

space – Comcast/Time Warner, Frontier/Verizon, AT&T/DirecTV, Charter/Time Warner/Bright House – during the last three years with consistent recommendations regarding the need for tangible public benefits for broadband deployment and adoption that are derived as a result of the mergers and acquisitions. CETF participates both before the FCC and the California Public Utilities Commission, and has been successful in obtaining, through voluntary commitments enforced by a regulatory agency, a variety of public benefits for consumers including (1) discounted broadband rates and free/low cost electronic devices for low income and underserved communities, (2) public Wi-Fi hotspots, and (3) commitments for broadband infrastructure builds in unserved or underserved areas in California. Regulators have relied upon CETF broadband data and testimony in several merger decisions. CETF has negotiated legally-enforceable memoranda of understanding with two communications companies for public interest benefits relating to broadband. It is with this background and in this context that CETF proffers comments on the CenturyLink acquisition of Level 3.

II. Issues that the FCC Should Consider When Reviewing the Proposed Acquisition

Under this Commission’s public interest framework for reviewing proposed transactions, Applicants must demonstrate that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience and necessity. CETF recommends that that the public interest demands that the Commission carefully review this \$34 billion acquisition and consider the impacts on the broadband services provided by the Applicants to our nation’s infrastructure and the secondary impacts on retail consumers and enterprise consumers. Among the issues considered should be the impact on competition of the services currently provided by Level 3 to mostly enterprise customers, whether service quality and reliability will be maintained, rate

impacts because rate increases may result in the trickle-down effect of increasing retail rates to consumers, and public safety impacts (rates and reliability to our first responders who rely on infrastructure of Applicants for mission critical communications). Further, of keen interest to CETF, will CenturyLink commit to continue to deploy advanced communications services in unserved or underserved broadband areas as aggressively as Level 3 has? If it does, CETF advocates such voluntary commitments be made into enforceable conditions of any Commission approval.

As to reasonable rates, Level 3 provides critical backhaul transport service to cellular/PCS wireless communications providers, Internet service providers, and Wireless Internet Service Providers (WISPs). These backhaul services provide important middle mile connections that enable other retail communications providers to connect residential, enterprise and mobile customers to the Internet or the Public Switched Telephone Network. These rates are kept fair and reasonable by competition. If a major competitive player (Level 3) is removed, will reduced competition keep these rates fair and reasonable? A review of the competitiveness of the relevant market should be undertaken to ensure no harms will result.

Of particular concern to CETF is whether the removal of a vigorous middle mile player like Level 3 may have an adverse impact on competition for wholesale access. Notably, the lack of middle mile facilities in California has prompted two major grants from the American Recovery and Reinvestment Act (ARRA) program and multiple grants from the California PUC's California Advanced Services Fund program to try and bring much needed Internet backbone service to California's vast rural areas, particularly in the far North, Eastern Sierra, Central Coast and Southern California areas. CETF has concerns about the priority CenturyLink will put on bringing middle mile facilities (long-haul and core network services) to rural areas in

our state, and if it does, what rates it will charge to Internet service providers and WISPs that serve these rural customers. These middle mile rates in turn will impact retail consumer rates.

The acquisition of Level 3 by CenturyLink has significant implications for consumers that depend on Internet access and services supported by long-haul broadband infrastructure. The FCC needs to ensure that there is no disruption of that function that has been provided historically by Level 3 as a consequence of the acquisition by CenturyLink. Further, the FCC needs to secure commitments from CenturyLink to continue to provide long-haul service at a reasonable price to avoid unintended dislocation of service that supports public purposes. For example, for the past 20 years, Level 3 has provided long-haul broadband to CENIC (Corporation for Education Networks in California), a non-profit organization,¹ at a reasonable price which has enabled an array of critical public-purpose services. CENIC supports all the research and higher education institutions, the K-12 High-Speed Network for public schools and libraries, and the California Telehealth Network, including connectivity to the 7 largest academic medical centers. CENIC operations directly impact scientific research, economic productivity, environmental sustainability, public safety, and quality of life for all California communities and residents. In addition, CENIC serves 10,000 anchor institutions that touch the lives of 20 million Californians each year.

¹ CENIC advances education and research statewide by providing a world-class network essential for innovation, collaboration, and economic growth. This nonprofit organization operates the California Research and Education Network (CalREN), a high-capacity network designed to meet the unique requirements of over 20 million users, including the vast majority of K-20 students together with educators, researchers and other vital public-serving institutions. CENIC's Charter Associates are part of the world's largest education system; they include the California K-12 system, California Community Colleges, the California State University system, California's Public Libraries, the University of California system, Stanford, Caltech, and USC. CENIC also provides connectivity to leading-edge institutions and industry research organizations around the world. <http://cenic.org/about/about-overview>

This long-haul business partnership between CENIC and Level 3 needs to be committed to by CenturyLink without service disruption or pricing dislocation to ensure that the public interest is served after this proposed acquisition. It would be appropriate as a public benefit from this corporate consolidation to require CenturyLink to contractually agree with CENIC to continue the long-haul service for these public institutions at a reasonable price for at least the next 20 years. Further, there should be a review and revision of “appropriate use policies” to recognize the nature of public-private collaboration and partnerships in the world of research and innovation that is supported by networks such as CENIC and enabled by long-haul broadband that has been provided by Level 3 and will be acquired by CenturyLink.

Further, assuring affordable long-haul for CENIC and the thousands of anchor institutions it serves will help close the Digital Divide for low-income residents and other disadvantaged populations who disproportionately rely on anchor institutions such as schools, universities and public computing centers to obtain access to high-speed Internet access. California has a higher concentration of low-income households than the nation, and more challenging rural terrain than most states, requiring focused efforts to address inequalities. Although California is a wellspring of technological innovation, the Digital Divide persists: 30% of the households are unconnected or underconnected, they lack both home high-speed Internet access and a computing device other a smartphone. Although 84% of households report high-speed Internet access at home, 14% is with a smartphone only. While a smartphone is an adequate device for obtaining information while mobile and using certain applications, it is an inadequate device for school homework such as drafting term papers, or developing workforce skills. That sobering reality increases the importance of Internet access at anchor institutions for low-income and disadvantaged residents.

Population – Households	Percent Not Connected	Percent Connected	Percentage by Smartphone Only
Statewide (California)	16%	84%	14%
Low-Income (<\$20,000 Annually)	32%	68%	25%
Spanish-Speakers	31%	69%	30%
People With Disabilities	29%	71%	13%
Seniors (65 or Older)	44%	56%	5%
Non-High School Graduates	37%	63%	29%

The California Public Utilities Commission reported in April 2016 that only 43%² of rural California residents have reliable broadband, again making affordable access at anchor institutions like schools, libraries and health care institutions an imperative for participation in the digital world.³

III. Conclusion

WHEREFORE, for all the above reasons cited above, the Commission should ensure that any approval of this acquisition include the following enforceable conditions in order to serve the public interest: (1) long term rate protections to protect important non-profit customers similar to CENIC; (2) enforceable voluntarily commitments by Applicants to build additional middle mile broadband infrastructure to help reach unserved and underserved broadband areas in the nation; (3) commitments that CenturyLink will not engage in anticompetitive behavior as to the wholesale market after this acquisition; and (4) commitments that the quality and reliability of

² CASF Annual Report 2015, at page 3. http://www.cetfund.org/files/CASF_2015_Annual_Report.pdf

³ Chart: CETF Annual Report 2016-2017, at page 21.

facilities remain, including for critical public safety applications and other anchor institutions such as schools, libraries and health care providers.

Respectfully submitted,

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