



**U.S. Department of Justice**

Antitrust Division

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*Liberty Square Building  
450 5<sup>th</sup> Street, N.W.  
Washington, DC 20001*

May 11, 2017

Via E-Mail: [Kris.Monteith@fcc.gov](mailto:Kris.Monteith@fcc.gov)

Kris Monteith  
Acting Bureau Chief  
Wireline Competition Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Dear Ms. Monteith:

As you are aware, the Antitrust Division of the United States Department of Justice (“the Department”) is investigating the proposed acquisition by CenturyLink, Inc. of Level 3 Communications, Inc. Our efforts would be assisted by, and we request access to, the confidential and highly confidential information submitted in WC Docket No. 05-25, RM-10593, WC Docket No. 15-247, WC Docket No. 16-143, and WC Docket No. 16-403, and any related material or analyses, including the Highly Confidential version of the Commission’s April 28, 2017 Report and Order containing confidential or highly confidential information submitted in those dockets, as well as any confidential and highly confidential information that is submitted under those dockets during the pendency of the Department’s investigation of the CenturyLink-Level 3 transaction.

It is the Department’s policy to protect the confidentiality of sensitive information provided by its sources, and to prevent competitively sensitive information from being shared among competitors. Sensitive information includes “confidential business information” which means trade secrets or other commercial or financial information (a) in which the company has a proprietary interest or which the company received from another entity under an obligation to maintain the confidentiality of such information, and (b) which the company has in good faith designated as confidential. Accordingly, sensitive information will only be used by the Department for a legitimate law enforcement purpose, and it is the Department’s policy not to disclose such information unless it is required by law or necessary to further a legitimate law enforcement purpose. In the Department’s experience, the need to disclose sensitive material occurs rarely.

In the event of a request by a third party for disclosure of confidential business information under the Freedom of Information Act, the Department will act in accordance with its stated policy (*see* 28 C.F.R. § 16.8) and will assert all applicable exemptions from disclosure, including those exemptions set forth in 5 U.S.C. §§ 552(b)(4), (b)(7)(A) and (b)(7)(D) (to the extent applicable). *See also* *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 880 (D.C. Cir.), *cert. denied*, 113 S. Ct. 1579 (1992) (protection of voluntarily provided information).

Although it is the Department's policy not unnecessarily to use sensitive information in complaints or court papers accompanying a complaint, which are publicly available documents, the Department cannot provide an absolute assurance that sensitive information will not be included in such documents. If a complaint is filed, it is the Department's policy to notify the concerned party as soon as is reasonably practicable of any decision by the Department to use confidential business information for the purpose of seeking preliminary relief. Our policy is generally to file under seal any confidential business information used for such purpose and advise the court that the information has been designated as confidential. Moreover it is the Department's policy to make reasonable efforts to limit disclosure of the information to the court and outside counsel for the other parties to the litigation until the concerned party has had a reasonable opportunity to appear before the court and until the court has ruled on the concerned party's application.

In the event of a request by a third party for disclosure of any appropriately designated confidential business information under any provision of law other than the Freedom of Information Act, it is the Department's policy to assert all applicable exemptions from disclosure permitted by law. In addition, the Department's policy is to use its best efforts to provide concerned parties such notice as is practicable prior to disclosure of any confidential business information to a third party who requests it under any provision of law other than the Freedom of Information Act.

If confidential business information becomes the subject of discovery in any litigation to which the Department is a party, it is the Department's policy to use its best efforts to assure that a protective order applicable to the information is entered in the litigation. In addition, our policy is to not voluntarily produce the confidential business information until concerned parties have had a reasonable opportunity to review and comment on the protective order and to apply to the court for further protection. It is the Department's policy not to oppose a court appearance by concerned parties for this purpose.

I trust that the above information addresses any concerns that you may have. Please contact Scott Reiter, at 202-51408796, so that we can make arrangements to obtain this information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott Scheele".

Scott Scheele  
Chief, Telecommunications & Media Enforcement Section

cc: Terri Natoli, Wireline Competition Bureau  
Joel Rabinovitz, Office of the General Counsel, FCC