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May 21, 2018

VIA ECFS

NOTICE OF EX PARTE (Submission to the Record)

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

Re: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98; *Connect America Fund*, WC Docket No. 10-90; *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155

Dear Ms. Dortch:

CenturyLink, Inc.[1] submits this *ex parte* to elaborate on its proposal for the Commission to establish a rule providing that carriers have the duty (i) to permit requesting carriers to directly interconnect their networks for the termination of access traffic; or (ii) if the carrier receiving a request for direct interconnection for the termination of access traffic nevertheless prefers to receive such traffic through indirect interconnection, to bear financial responsibility for the costs of receiving traffic from the point of direct interconnection they prefer.[2] As set forth below, adoption of this proposal will improve efficiency, eliminate incentives for wasteful arbitrage, and enhance competition by aligning Commission policy with sound economic principles.

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[1] CenturyLink, Inc. files this *ex parte* on behalf of its wholly-owned subsidiaries.

[2] Letter from Jeffrey S. Lanning, CenturyLink, to Marlene H. Dortch, FCC, CC Docket No. 01-92, WC Docket No. 07-135, WC Docket No. 10-90, Ex Parte Notice (Apr. 30, 2018) (April 30 *Ex Parte)*.

An Economically Efficient Alternative to Direct Interconnection Alternative Is a Critical Ingredient to a Market-Based ICC Regime

CenturyLink appreciates that the draft *Notice of Proposed Rulemaking* on circulation before the Commission seeks comment on CenturyLink's proposal regarding the use of indirect interconnection as an alternative to direct interconnection for terminating access traffic.[3] In the April 30 *Ex Parte*, CenturyLink stated that it would provide a fuller discussion of its proposal in the coming weeks. As explained herein, prompt adoption of the proposed interconnection requirement would be a limited and balanced step that nevertheless would go a long way toward promoting efficient network interconnection.

The underlying policy merits of this proposal are straightforward and indisputable:

First, the proposal encourages efficient network deployment and investment decisions. When carriers bear the costs associated with their own network deployment and interconnection decisions, they have the incentive to make efficient choices. Under the proposed framework, carriers electing to seek direct interconnection for access termination will bear the cost to establish that connection. Conversely, terminating carriers declining to accept such direct interconnection requests will be required to bear the financial responsibility for receiving traffic from the vendor they have selected for indirect interconnection. The goal is for the entity making the choice—regarding network deployment or traffic routing—to bear the cost of that choice.

Second, the proposal will reduce incentives to engage in regulatory arbitrage. Under the current intercarrier compensation framework, some carriers have an incentive to refuse requests for direct interconnection in order to obtain revenues or other benefits derived from charges imposed on interconnecting carriers. Notably, these incentives exist both for carriers engaging in access stimulation under the Commission's rules as well as carriers that do not. The proposed framework would eliminate this incentive by requiring a carrier that insists on indirect interconnection to bear much of the financial responsibility for that choice.

Third, the proposal would enhance competition and market efficiency. Under the proposal, carriers with connections to a terminating carrier will have an incentive to offer transit service at competitive prices; if they attempt to charge uncompetitive prices, other carriers will simply elect to obtain interconnection for themselves.

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[3] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC-CIRC1806-06.

Finally, adoption of this proposal will address a variety of intercarrier compensation problems and disputes in the industry that have been well documented in the record.[4]

CenturyLink Direct Interconnection Proposal

To better promote these policy objectives discussed above, CenturyLink proposes that the Commission adopt a rule embracing the following concepts:

> Any carrier providing retail voice services (including LECs, CMRS providers, and carriers working with interconnected VoIP providers) shall offer other carriers an opportunity to interconnect directly or indirectly with no additional charges for all terminating switched access traffic. If such a terminating carrier declines a request to connect directly with no additional charge (and instead designates one or more points of indirect interconnection), then that terminating carrier and not the carrier requesting direct interconnection shall be financially responsible for any intermediate services necessary to receive traffic from such a point of indirect interconnection (including, e.g., tandem switching and tandem switched transport provided by an affiliated or third party intermediate carrier).

In establishing this proposal, the Commission should also clarify a few simple, complementary principles:

- The direct interconnection requirement is a default rule – i.e. alternative arrangements that are mutually agreeable are acceptable.

- The prohibition on "additional charges" is directed at any costs associated with establishing connectivity itself to the point designated by the terminating carrier.

- Terminating carriers can still compete to provide terminating transport services and charge for them. This proposal will only apply where the carrier requesting termination is willing and able to incur the cost of deploying facilities to reach the point of direct interconnection. In other words, in the event an IXC chooses to deliver its traffic to a terminating carrier via an indirect connection, that IXC will bear financial responsibility for the delivery of its traffic to the terminating carrier network.

Commission Authority to Establish This Proposal

The Commission plainly has legal authority to adopt this proposal.

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[4] *See* Peerless Networks, Inc. *Notice of Ex Parte*, WC Docket Nos. 10-90, *et al*., filed Apr. 12, 2018, Dec. 4, 2017, Dec. 10, 2017.

To begin with, the Commission could adopt it under its general Section 201 rulemaking authority to implement its bill and keep ICC framework adopted pursuant to Sections 251, 201 and 332.

In the *Transformation Order*, the Commission established a bill and keep ICC regime for most terminating access charges. Critical to its decision to establish a bill and keep regime for these functions was its finding that carrier costs for these terminating access functions should be recovered through end-user charges, which are potentially subject to competition, rather than "through intercarrier charges, which may not be subject to competitive discipline."[5] The Commission concluded that it had legal authority to accomplish these results "pursuant to [its] rulemaking authority to implement sections 251(b)(5) and 252(d)(2), in addition to authority under other provisions of the Act, including sections 201 and 332."[6] Specifically, it relied on the fact that Section 251(b)(5) states that LECs have a "'duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.'"[7] It also relied on the fact that "Section 201(b) grants the Commission authority to 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.'"[8] The Commission concluded that it had authority "to define the types of traffic that will be subject to section 251(b)(5)'s reciprocal compensation framework and to adopt a default compensation mechanism that will apply to such traffic in the absence of an agreement between the carriers involved."[9] It further found that it had authority under Section 332 to establish a default bill-and-keep methodology to apply in the absence of an interconnection agreement with respect to wireless traffic exchanged with a LEC.[10]

The Commission could conclude that adoption of the proposed direct interconnection framework takes further, modest steps to implement the Commission's bill and keep framework and advances the same policy goals as those reforms adopted in the *Transformation Order*, and that the Commission therefore has authority under these same provisions.

Notably, this proposal is not inconsistent with the Commission's findings in the *Transformation Order* about the continuing role of states in the bill-and-keep regime. As the Commission explained:

> Under a bill-and-keep framework, the determination of points on a network at which a carrier must deliver terminating traffic to avail itself of bill-and-keep

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[5] *Transformation Order*, 26 FCC Rcd at 17905-06 ¶ 742.

[6] *Id*. at 17904-05 ¶ 738 (internal reference, therein, omitted); *see also id*. at 17914-25 ¶¶ 760-781.

[7] *Id*. at 17914 ¶ 760 (citation omitted).

[8] *Id.* (citation omitted).

[9] *Id*. at 17915 ¶ 760.

[10] *Id*. at 17923-24 ¶ 779.

> (sometimes known as the "edge") serves this function, and will be addressed by states through the arbitration process where parties cannot agree on a negotiated outcome.[] Depending upon how the "edge" is defined in particular circumstances, in conjunction with how the carriers physically interconnect their networks, payments still could change hands as reciprocal compensation even under a bill-and-keep regime where, for instance, an IXC pays a terminating LEC to transport traffic from the IXC to the edge of the LEC's network.[] Consistent with their existing role under sections 251 and 252, which we do not expand or contract, states will continue to have the responsibility to address these issues in state arbitration proceedings, which we believe is sufficient to satisfy any statutory role that the states have under section 252(d) to "determin[e] the concrete result in particular circumstances" of the bill-and-keep framework we adopt today.[][11]

The Commission also noted, in seeking comment about how the network edge should be defined for bill and keep terminating traffic, that states "should establish the network edge pursuant to Commission guidance."[12] If the Commission establishes the proposed interconnection framework, states will still retain considerable authority to "determin[e] the concrete result in particular circumstances."[13]

The Commission also has authority to adopt this direct interconnection proposal pursuant to Section 251(a) and the Commission's general rulemaking authority under 201(b). Section 251(a) provides that "[e]ach telecommunications carrier has the duty…to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." The proposed framework would implement that statutory provision in a manner that, as discussed above, serves important policy goals of encouraging efficiency and competition while removing incentives for regulatory arbitrage, and therefore advances the public interest. Accordingly, the Commission could conclude that, although Section 251(a) permits a carrier to satisfy its duty to interconnect by choosing to do so directly or indirectly, the proposed rule, which specifies the financial obligations that flow from the carrier's choice, is necessary to advance these important federal policies.

In making this determination, the Commission could conclude that the statutory language does not, as applied in this context, give terminating carriers the option of insisting that requesting carriers bear the costs of indirect interconnection. The Commission established in the *Local Competition Order*[14] that an incumbent LEC at the time of the 1996 Act could not *force* a

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[11] *Id.* at 17922-23 ¶ 776 (citations omitted).

[12] *Id.* at 18117 ¶ 1321.

[13] *Id.* at 17923 ¶ 776 (citation omitted).

[14] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service*

competitive provider into direct interconnection. The Commission was clear that the driving concern was that competitive carriers be permitted to establish interconnection arrangements, particularly those with ILECs, "based upon their most efficient technical and economic choices."[15] Similarly, it follows that the Commission can and should find that a terminating carrier today cannot force a carrier requesting direct interconnection to bear the costs of indirect interconnection that it finds to be less efficient (as demonstrated by the request for direct interconnection). In other words, just as CMRS providers in the late 1990's contended that they should be free to choose the most efficient manner of interconnection with ILECs, so too IXCs should be free to do so as well, or at least to avoid the additional costs of indirect interconnection when that is the only method a terminating carrier will permit.

Finally, it is noteworthy that this proposal is not inconsistent with Section 251(f), which exempts certain rural ILECs from specified interconnection obligations set forth in Section 251(c).[16] Because this proposal does not impose obligations pursuant to Section 251(c), but instead pursuant to Section 251(a), Section 251(f) does not apply.

Pursuant to section 1.1206(b) of the Commission's rules, this notice is being filed in the above-referenced dockets. Please do not hesitate to contact me with any questions regarding this matter.

Sincerely,

/s/ Timothy M. Boucher

cc (via e-mail):
Kris Monteith, Chief, Wireline Competition Bureau
Jay Schwarz, Wireline Advisor to FCC Chairman Ajit Pai, Wireline Competition Bureau
Amy Bender, Special Counsel, Telecommunications Access Policy Division, Wireline Competition Bureau
Jamie Susskind, Wireline Advisor to Commissioner Brendan Carr, Wireline Competition Bureau
Travis Litman, Senior Legal Advisor, Wireline and Public Safety
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Pamela Arluk, Division Chief, Pricing Policy Division, Wireline Competition Bureau
Victoria Goldberg, Deputy Division Chief, Pricing Policy Division, Wireline Competition Bureau

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Providers, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499, 15988-92 ¶¶ 992-98 (1996) (*Local Competition Order*) (subsequent regulatory history omitted).

[15] *Id.*

[16] 47 U.S.C. § 251(f).