

PUBLIC VERSION

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	Docket No. 18-73
CenturyLink Communications, LLC and)	File No. EB-18-MD-002
Level 3 Communications, LLC,)	
)	
Complainants,)	
)	
v.)	
)	
Birch Communications, Inc.,)	
)	
Defendant.)	

JOINT STATEMENT AND SECOND STIPULATION OF FACTS

This Joint Statement and Second Stipulation of Facts is respectfully submitted by CenturyLink Communications, LLC (“CenturyLink”); Level 3 Communications, LLC (“Level 3”); and Birch Communications, LLC (“Birch”) (collectively, the “Parties”) in accordance with the Federal Communications Commission’s Letter Ruling dated May 9, 2018, as amended May 17, 2018.

1. The Parties confirm that the presubscribed interexchange carrier charge (“PICC”) assessed by Birch on CenturyLink and Level 3 was billed only in the BellSouth territory during the relevant time period.
2. As shown in Attachment 1 hereto, on a nationwide basis CenturyLink paid Birch **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** from Birch’s interstate access tariff in non-PICC charges billed from February 2015 through January 2018.
3. As shown in Attachment 2 hereto, in the BellSouth region CenturyLink paid Birch **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** from Birch’s interstate access tariff in non-PICC charges billed from February 2015 through January 2018.
4. As shown in Attachment 3 hereto, on a nationwide basis Level 3 paid Birch **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** from Birch’s interstate access tariff in non-PICC charges billed from February 2016 through February 2018.

PUBLIC VERSION

5. As shown in Attachment 4 hereto, in the BellSouth region Level 3 paid Birch **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]** from Birch's interstate access tariff in non-PICC charges billed from February 2016 through February 2018.
6. Putting aside the question of whether pre-judgment interest should be awarded or which interest rate should apply, the Parties agree that the correct methodology for calculating any pre-judgment interest in this proceeding should be based on daily compounded interest starting from the due date of the first invoice containing disputed, paid charges (*i.e.*, March 10, 2015 for CenturyLink and March 9, 2016 for Level 3) and thereupon accruing daily up to and including today.
7. CenturyLink and Level 3 submitted modified interest tables in their Reply in support of their Formal Complaint. To the extent the FCC finds for CenturyLink and Level 3 in this Formal Complaint, the Parties refer the FCC to the modified interest calculations for PICC as set forth in the CenturyLink/Level 3 Reply, and to the attachments to this Joint Statement for interest calculations for non-PICC related charges.
8. The Parties report on settlement prospects that, on April 30, 2018, Birch submitted another settlement offer to CenturyLink and Level 3. CenturyLink and Level 3 continue to evaluate Birch's offer, and anticipate responding this week.



Charles W. Steese
Martin J. Estevao
ARMSTRONG TEASDALE LLP
4643 S. Ulster Street, Suite 800
Denver, Colorado 80237
(720) 200-0676
csteese@armstrongteasdale.com
mestevao@armstrongteasdale.com

*Attorneys for Complainants CenturyLink
Communications, LLC and Level 3
Communications, LLC*

Dated: May 21, 2018



Chérie R. Kiser
Angela F. Collins
CAHILL GORDON & REINDEL LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006
(202) 862-8900
ckiser@cahill.com
acollins@cahill.com

Thorn Rosenthal
CAHILL GORDON & REINDEL LLP
80 Pine Street
New York, NY 10005
(212) 701-3000
trosenthal@cahill.com

*Attorneys for Defendant Birch
Communications, LLC*

Attachment 1

A black and white photograph of a large, ornate, classical-style building facade. The building features multiple columns and a prominent pediment. The image is oriented horizontally but is placed vertically on the page.

Attachment 2

6

Attachment 3

[BEGIN CONFIDENTIAL]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

Attachment 4

[END CONFIDENTIAL]