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Associate General Counsel

REQUEST FOR CONFIDENTIAL TREATMENT

September 3, 2019

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Request for Access to Form 477 Broadband Data*
WC Docket No. 11-10

Request for Confidential Treatment
Form 477 Fixed Broadband Deployment Data – CenturyLink CLEC Operations

Dear Ms. Dortch:

CenturyLink requests confidential treatment under the Commission's rules, including Sections 0.457(d)(2), 0.457(g)(3), and 0.459,¹ for CenturyLink's submission of information on competitive local exchange carrier (CLEC) fixed broadband deployment included in the June 2019 Form 477. CenturyLink limits this request to one CLEC, CenturyLink Communications, LLC, FRN number 0018421941.²

CenturyLink believes that both it and the Commission have an interest in protecting competitively sensitive data from public release and that the public interest supports treating non-public, competitive deployment information to protect and promote competition. The Commission has routinely recognized that respecting confidentiality of information serves the public interest.³

¹ 47 C.F.R. §§ 0.457(d)(2), 0.457(g)(3), and 0.459.

² CenturyLink Communications, LLC operates as an interexchange carrier, CLEC. It is authorized to provide service in all U.S. states and territories. The much larger CLEC operations of the Level 3 Communications, LLC, which were acquired by CenturyLink on November 1, 2017, are outside the scope of this request.

³ See, e.g., *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, 26 FCC Rcd 1594 (2011).

CenturyLink's information on the CLEC fixed broadband deployment of CenturyLink Communications, LLC, included in the June 2019 Form 477, is confidential as it is proprietary information that CenturyLink does not reveal to the public or its competitors in the normal course of business. The specific information has not previously been publicly released through broadband mapping or other initiatives. CenturyLink thus requests that information on the CLEC fixed broadband deployment of CenturyLink Communications, LLC included in the June 2019 Form 477 be withheld from public inspection under Freedom of Information Act (FOIA) Exemption 4 and Section 0.457(d)(2) of the Commission's rules.⁴

The Commission requires that Form 477 data be submitted electronically through a dedicated interface, and CenturyLink is submitting its information through that system. Form 477 includes information on fixed broadband and voice telephone/interconnected VoIP subscribership that the Commission has long recognized as routinely confidential. By checking a box on Form 477, subscribership data is automatically subject to confidential treatment. However, deployment data is a recent addition to the Form 477 and it is not automatically subject to confidential treatment, even for CLECs.

Accordingly, CenturyLink is submitting its electronic Form 477 filing with a message flag specifying that the relevant portion of its Form 477 submission – that which provides CLEC fixed broadband deployment data of CenturyLink Communications, LLC – is being submitted subject to this request for confidential treatment under the Commission's rules. That request is filed concurrent with the electronic Form 477 data submission. CenturyLink adopted this approach with the relevant portion of its previous ten Form 477 submissions, after discussions with appropriate Commission staff. CenturyLink is following the same approach for its June 2019 Form 477 electronic submission, again limited to the fixed broadband deployment data of its CLEC, CenturyLink Communications, LLC.

CLEC fixed broadband deployment data shows where a competitive carrier (including the CLEC affiliates of incumbent local exchange carriers [ILECs]) has network facilities capable of providing services. The extent of a competitor's network provides insights into its ability to bid for particular customer locations, its likely reliance on ILEC or other wholesale facilities, its likely costs of providing service to particular locations, the likely timing of its entry into a given service in a geographic market or adjacent areas, and consequentially its competitive threat to other providers in the area. This is commonly treated as confidential information within the CLEC industry. Further, the Commission itself has routinely treated similar information as confidential – even highly confidential – in other contexts, such as its data collections in the pending Special Access proceeding⁵ and in merger-related dockets.

⁴ 5 U.S.C. § 552(b)(4) and 47 C.F.R. § 0.457(d)(2).

⁵ See, e.g., *Special Access for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Order on Reconsideration, DA 14-1327 at ¶ 15 & App. B at 5 (rel. Sept. 15, 2014) (showing that information on ability to serve particular areas and locations is “not routinely made available to the public” and warrants confidential or highly confidential treatment).

In support of this request, CenturyLink provides the following information, as required by Sections 0.457(d)(2) and 0.459(b) of the Commission's rules.

1. Information for Which Confidentiality is Requested. CenturyLink requests confidential treatment for its information on CLEC fixed broadband deployment by CenturyLink Communications, LLC included in the June 2019 Form 477. The Commission's Form 477 requires carriers to provide information on network deployment by CLEC affiliates.⁶ This is data that it does not make publicly available and that it treats as sensitive and commercially confidential.
2. Proceeding/Reason for Submission. CenturyLink is submitting the information on CLEC fixed broadband deployment by CenturyLink Communications, LLC included in the June 2019 Form 477 as it is required by the Commission's Form 477 reporting requirements. Prior to the June 2014 Form 477 filing, this information had not been included within Form 477 reporting requirements.
3. Nature of Confidential Information. The information contains commercially sensitive information that may be withheld from public disclosure under FOIA Exemption 4. The Commission has long recognized that, for purposes of Exemption 4, "records are 'commercial' as long as the submitted has a commercial interest in them." *Robert J. Butler*, 6 FCC Rcd 5414, 5415 (1991), citing *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *American Airlines v. National Mediation Board*, 588 F.2d 863, 868 (2d Cir. 1978). Additionally, information about customers constitutes commercial information that may be withheld not only under FOIA Exemption 7 but also under FOIA Exemption 4. See *Mobile Relay Associates*, 14 FCC Rcd 1891, 18922-23 (WTB 1999).
4. Competitiveness of Market. CLEC fixed broadband deployment information by CenturyLink Communications, LLC included in the June 2019 Form 477 derives from and relates to CenturyLink's provision of competitive services and thus "concerns a service subject to competition." 47 C.F.R. § 0.459(b)(4).
5. Harm from Disclosure. The information on CLEC fixed broadband deployment by CenturyLink Communications, LLC included in the June 2019 Form 477 is confidential because its release would likely cause competitive harm to CenturyLink. Competitors are always interested in the extent of a CLEC's competitive network, the extent of its reliance on other carriers' facilities, its ability to provision to serve a particular market or a particular customer, the value of its network assets, and similar confidential information about their services. Providing competitors and suppliers with access to previously undisclosed and confidential information on CenturyLink

⁶ ILECs also are being required for the first time to provide information on network deployment. However, ILECs previously have submitted comparable data to NTIA without needing confidential treatment.

Communications, LLC's CLEC network deployment – which is information not otherwise publicly available – could competitively harm CenturyLink. The D.C. Circuit has found parties do not have to “show actual competitive harm” to justify confidential treatment. Rather, “[a]ctual competition and the likelihood of substantial competitive injury” is sufficient to bring commercial information within the realm of confidentiality.” *Public Citizen Health Research Group*, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 U.S. F.2d 527, 530 (D.C. Cir. 1979).

6. Measures Taken to Prevent Unauthorized Disclosure. CenturyLink treats the information on CLEC fixed broadband deployment by CenturyLink Communications, LLC included in the June 2019 Form 477 as confidential and proprietary, and it does not disclose the information to the general public. CenturyLink maintains this information confidential and compiled the Form 477 data from systems that are secured against public access.
7. Previous Disclosure. CenturyLink's information on CLEC fixed broadband deployment by CenturyLink Communications, LLC included in the June 2019 Form 477 has not previously been disclosed to the general public.
8. Requested Duration of Nondisclosure. CenturyLink believes that the information on CLEC fixed broadband deployment by CenturyLink Communications, LLC included in the June 2019 Form 477 would likely always be considered confidential and would likely never become stale in the foreseeable future.

Accordingly, CenturyLink respectfully requests that the Commission withhold from public inspection or public disclosure its submission of Form 477 data for CLEC fixed broadband deployment by CenturyLink Communications, LLC. Should you need additional information, please contact me.

Respectfully submitted,

/s/ John E. Benedict

cc: By E-mail

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Industry Analysis and Technology Division
Wireline Competition Bureau