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REDACTED – FOR PUBLIC INSPECTION

VIA ECFS

EX PARTE

October 15, 2015

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

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375

Dear Ms. Dortch:

On October 13, 2015, Melissa Newman and Jeb Benedict (in person) and Paul Cooper, Tom Dethlefs and Glenda Weibel (by telephone) of CenturyLink met with Travis Litman, Legal Advisor to Commissioner Rosenworcel, and separately with Nicholas Degani, Legal Advisor to Commissioner Pai. On October 14, 2015, Melissa Newman and Jeb Benedict (in person) met with Rebekah Goodheart, Legal Advisor to Commissioner Clyburn, Stephanie Weiner, Legal Advisor to Chairman Wheeler, and Gil Strobel and Madeleine Findley of the Wireline Competition Bureau.

At the meetings, CenturyLink discussed the Fact Sheet released by the FCC summarizing an item proposing wide-reaching regulation of interstate and intrastate inmate calling services (“ICS”) to be considered by the Commission at its October 22 meeting. CenturyLink emphasized that the Commission lacks legal authority over intrastate inmate calling services, site commissions or ancillary fees. CenturyLink also emphasized that the rate caps reported in the Fact Sheet are far too low and necessarily threaten the viability of the inmate calling reform. The proposed \$0.11 per minute rate cap for prisons, for example, will not allow CenturyLink to recover its costs of serving many prisons at any realistic level of calling volume. It is actually

substantially below CenturyLink's *average* cost to serve prisons nationwide, even excluding site commissions that may be required by statute or contract.

The proposed rate caps are grossly unreasonable as they will render many correctional facilities uneconomic to serve. CenturyLink explained that ICS is really a managed IT service, not a common carrier service. As a result, the cost to serve correctional facilities varies widely from facility to facility. For example, CenturyLink's cost to serve the Texas prison system exceeds [Begin Confidential ██████████ End Confidential], even excluding the statutory 40% commission required in Texas.

The high cost to serve the Texas Department of Criminal Justice results from a combination of factors. One such factor is capital cost. Because Texas had not allowed regular inmate telephone calling prior to CenturyLink's contract, over [Begin Confidential ██████████ End Confidential] in capital investment was required for wiring and phone infrastructure alone. In addition, special security features such as voice biometrics – also required by statute – and strict manual processes for pre-registering and verifying each called party seeking to receive a call from a Texas inmate, are necessary under the contract. Texas is not alone in requiring strict security processes. For example, the Utah and Arizona Departments of Correction, which transitioned to CenturyLink in 2015, have a similar registration and verification process for called parties, coupled with strict rules regarding inmate calling privileges depending on custody and disciplinary status.

Capital costs and the costs of special security-related services in Texas alone totaled approximately [Begin Confidential ██████████

██████████ End Confidential]. These costs were even higher in 2013. In addition, CenturyLink incurs substantial network, technical support, field operations and repair, billing and customer care costs to provide ICS under its Texas contract.

At the meetings, CenturyLink also expressed concern about the need for more realistic transition time for correctional facilities and providers under any new ICS rules. To allow providers and correctional facilities time to adjust, the Commission should either grandfather existing contracts or provide for at least a full budget cycle as a transition period for any new rules.

Finally, while CenturyLink explained that, as part of a reasonable comprehensive reform program, it could support the restrictions on ancillary fees described in the Fact Sheet, CenturyLink is concerned that ancillary fee policies and use of third parties might be used by some ICS providers to circumvent the restrictions. Purchase minimums, purchase maximums, and third party payment processors are of particular concern. Providers might impose high purchase minimums and complex refund policies to obtain captured funds. Providers might also adopt low purchase maximums to force customers to have to repeatedly re-purchase services and

generate transaction fees. To close these loopholes, the Commission should prohibit purchase minimums and should require that purchase maximums be no lower than \$50. In addition, policies must be explained clearly and simply to consumers. For example, although a \$50 purchase maximum may be in place, call scripts can mislead consumers into believing they will receive special benefit from making a smaller purchase, such as for a single call.

CenturyLink is also concerned about the potential use of third party payment processors to inflate ancillary fees. Providers can divert transactions to certain third party processors, claiming high fees charged by the third party. Where the processor is a direct affiliate or party to a revenue sharing agreement, the Commission should impose the same caps that would apply if the transaction were completed by the provider itself. CenturyLink notes that third-party cash services such as Western Union provide negotiated rates less than \$6 per transaction. ICS providers should be permitted to use such services but not be permitted to enter into arrangements that add a direct markup or indirect markup through a revenue sharing arrangement.

Pursuant to the Commission's Protective Order in WC Docket No. 12-375, 28 FCC Rcd 16954 (2013), CenturyLink is designating certain information contained herein as Confidential and thus requests that it not be made available for public inspection (an Appendix is attached for this purpose, which also provides justification for such treatment pursuant to 47 C.F.R. §§ 0.457 and 0.459). Also pursuant to the Protective Order, the non-redacted version of this ex parte letter is marked as follows: "**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.**" In accordance with paragraph 4 of the Protective Order, two copies of this ex parte letter are being transmitted to Lynne Engledow of the Wireline Competition Bureau.

Pursuant to the FCC's Instructions and consistent with paragraph 4 of the Protective Order, a redacted version of this ex parte letter, with the confidential information omitted, is being filed in WC Docket No. 12-375 via the Commission's Electronic Comment Filing System. As required, the redacted version of this ex parte letter is marked as follows: "**REDACTED –**

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FOR PUBLIC INSPECTION", with only the confidentiality and filing method annotations modified.

Sincerely,

/s/ Thomas M. Dethlefs

Copy via email to:

Rebekah Goodheart
Travis Litman
Stephanie Weiner
Amy Bender
Nicholas Degani
Lynne Engledow
Gil Strobel
Madeleine Findley
Rhonda Lien
Bakari Middleton
Thom Parisi
Pamela Arluk

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APPENDIX

Confidentiality Request and Justification

47 C.F.R. § 0.457

The information included with CenturyLink's October 15, 2015 ex parte notice is entitled to confidential treatment under 47 C.F.R. § 0.457 as well as under the Protective Order in WC Docket No. 12-375.¹ The information includes data on the per-minute costs of service (2014) for calls made at prisons CenturyLink serves. This information is the type of confidential and proprietary commercial and financial information that is protected from public disclosure under the Commission's FOIA implementing rules² and thus is also protected from public inspection under 47 C.F.R. § 0.457(d).

47 C.F.R. § 0.459

CenturyLink also considers the confidential information submitted with its October 15, 2015 ex parte notice in WC Docket No. 12-375 as protected from public disclosure and inspection pursuant to 47 C.F.R. § 0.459(b) as described as follows.

Information for which confidential treatment is sought

CenturyLink seeks confidential treatment for information in its ex parte notice because it is confidential and proprietary commercial and financial information that is entitled to protection from public disclosure and availability. As such, this information is marked "**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**".

¹ 28 FCC Rcd 16954 ¶ 2 (Dec. 19, 2013). This type of information was similarly filed as confidential in 2014 pursuant to the Commission's Report and Order of September 26, 2013 in WC Docket No. 12-375, in accordance with the Public Notice of June 17, 2014 and the Commission's associated Instructions for the Mandatory Data Collection. *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (Sept. 26, 2013), *appeals pending sub nom.*, *Securus Technologies, Inc. v. FCC*, No. 13-1280 (D.C. Cir., pet. for rev. filed Nov. 14, 2013, with Order granting motion to hold in abeyance, Dec. 16, 2014); Public Notice, 29 FCC Rcd 7326 (June 17, 2014); FCC Instructions for Inmate Calling Services Mandatory Data Collection.

² 47 C.F.R. §§ 0.457, 0.459; *see also* 5 U.S.C. § 552.

Commission proceeding in which the information was submitted

The information is being submitted with CenturyLink's October 15, 2015 ex parte notice in WC Docket No. 12-375, *In the Matter of Rates for Interstate Inmate Calling Services*.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The information that CenturyLink considers proprietary and confidential includes data on the per-minute costs of service (2014) for calls made at the prisons CenturyLink serves. This confidential and proprietary commercial and financial information is not routinely available for public disclosure from CenturyLink and thus is protected from public availability and inspection under 47 C.F.R. § 0.457(d).

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

The type of confidential information in CenturyLink's ex parte notice would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), demonstrating that the Commission already anticipates that its release likely would produce competitive harm. The types of services that CenturyLink provides, including inmate calling services, are competitive. The release of this confidential information would cause competitive harm by allowing competitors to become aware of sensitive financial and commercial information regarding CenturyLink's business and internal operations in the inmate calling services market.

Measures taken to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

CenturyLink has treated and treats the confidential information disclosed in CenturyLink's ex parte notice as confidential, and has protected the information from public disclosure.

Justification of the period during which CenturyLink asserts that the material should not be available for public disclosure

At this time, CenturyLink cannot determine any date on which the confidential information included with the ex parte notice should not be considered confidential or become stale for purposes of the current matter, except that it will be handled in conformity with CenturyLink's general records retention policy, absent any continuing legal hold.

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Other information that CenturyLink believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable FCC and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

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