**Craig J. Brown**
Suite 250
1099 New York Avenue, N.W.
Washington, DC  20001
Phone 303-992-2503
Facsimile 303-896-1107

Associate General Counsel

**Ex Parte Notice**

***Via ECFS***

April 7, 2016

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

*Re:* *In the Matter of Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; WC Docket No. 15-247*

Dear Ms. Dortch:

CenturyLink submits this letter to respond to a question raised by Commission Staff regarding "headroom" in CenturyLink's annual tariff filing and to provide further information on the impact of requiring CenturyLink to reduce the early termination charges in its tariff plans under investigation. As explained, CenturyLink's revenues from the early termination and shortfall penalties agreed to by customers under those plans (as well as CenturyLink's other tariff plans) do not create headroom enabling CenturyLink to raise its tariff rates. And a Commission decision requiring CenturyLink to lower its early termination fees in those plans would significantly reduce its ability to enforce the commitments on which the discounts in those plans are based.

**1. Treatment of Revenues from RCP and TDP Penalties.** Commission Staff asked CenturyLink how it treats revenues it receives from early termination and shortfall penalties in the two CenturyLink tariff plans under investigation—the Regional Commitment Plan (RCP) and the Term Discount Plan (TDP)—for purposes of the annual Tariff Review Plan (TRP) process. In short, those revenues have no impact on CenturyLink's available headroom or the service rates it establishes under price caps for DS1 and DS3 services.

In the TRP process, CenturyLink and other price cap carriers must demonstrate that the tariffed access rates they are proposing for the coming year comply with the Commission's price cap regulations and associated requirements. As part of that process, CenturyLink pulls data from its billing systems to capture demand and revenue data for special access services for the previous year. The revenue data includes some miscellaneous and non-recurring revenues. Also extracted are credits for tariffed discount plans and credits awarded in validated disputes. As with all demand and revenue data, this detail is input into the TRP long form provided by the Commission and included as an exhibit called "Rate Detail" with the carrier's annual filing. This analysis determines whether a carrier has "headroom" to raise its access rates if it chooses to do so.

Theoretically, a price cap carrier could create headroom by including revenues for early termination and/or shortfall penalties in its billing demand and revenue for the previous year and then omitting or lowering them in its projections for the upcoming year. But, in practice, this does not happen in CenturyLink's TRP filings, as these revenues are not included in CenturyLink's headroom calculations.

It would also be readily apparent to CenturyLink's access customers, who generally are large companies who carefully scrutinize CenturyLink's annual access filings, if CenturyLink attempted to create headroom, and ultimately raise rates, in this way.

**2. Impact of Reducing Early Termination Penalties.** When applicable, both the RCP and TDP apply termination liability charges equal to 50 percent of the customer's remaining monthly charges due under the plan.[1] For example, under the RCP, if a DS1 customer discontinues service after completing 27 months of its 48-month term, the termination charge will be the current monthly charges for the service multiplied by 50 percent, multiplied by 19 months.

Early termination fees are intended to enforce commitments made by the customer in exchange for plan discounts, as well as help CenturyLink recover the cost of providing service under the plan. Without these charges, customers could ignore their commitments without consequence, forcing CenturyLink to deploy or maintain facilities that will shortly fall into disuse and cease to generate revenues. In the example just noted, for example, without a termination charge, the customer could obtain the RCP's 22 percent discount off month-to-month rates while fulfilling only a little more than half of the 48-month commitment it had made (and on which CenturyLink had relied in its design of the RCP).

Forcing CenturyLink to lower the termination liability in the RCP and/or TDP to less than 50 percent of remaining monthly charges would weaken CenturyLink's ability to enforce the term commitment the customer agreed to in entering the plan, and in turn would require CenturyLink to consider concomitant reductions to the applicable discounts. Even under the current terms of those plans, CenturyLink's special access customers—who generally are savvy businesses (whether end users or communications providers)—know that if they anticipate maintaining a circuit (or collection of circuits) at least a certain number of months, they are better off buying the circuit (or collection of circuits) under the tariff plan to get the plan discounts even if they might end up terminating early and incurring early termination charges.

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[1] *See* CenturyLink Operating Companies Tariff F.C.C. 11 § 7.1.8.B.

Under the RCP, the current "crossover point" is approximately 31 months.[2] In other words, if an RCP customer terminates or reduces its plan commitment more than 31 months into its 48-month term, it will end up paying less in total, even with early termination charges, than if it had purchased those circuits outside the plan. A mandate to lower the 50 percent early termination fee would further reduce this crossover point. If CenturyLink were forced to lower the early termination fee in the RCP to 30 percent of remaining monthly charges, for example, the crossover point would fall to 25 months, unless CenturyLink reduced the RCP's 22 percent discount to 17 percent to maintain the 31-month crossover. If the early termination fee were 20 percent, an RCP customer could "profitably" terminate the RCP only 20 months into its 48-month term plan, unless the RCP discount were reduced to 14 percent.

Such a mandated change would unreasonably tilt the terms of the plan against CenturyLink and require it to rethink whether it can reasonably continue to offer the same level of RCP discounts and associated circuit portability. The same logic applies to the termination fees in CenturyLink's TDP.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this ex parte presentation is being filed in the appropriate docket.

Sincerely,

/s/ Craig J. Brown

[2] This analysis assumes that the customer orders DS1 and DS3 circuits consisting of a typical configuration of two channel terminations, two central office connecting channels, and eight miles of transport.