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REDACTED – FOR PUBLIC INSPECTION

FILED/ACCEPTED

FEB 23 2012

Federal Communications Commission
Office of the Secretary

Via Courier

February 23, 2012

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

Re: *In the Matter of CenturyLink's Petition for Forbearance Pursuant to 47 U.S.C. §160(c) from Dominant Carrier and Certain Computer Inquiry Requirements on Enterprise Broadband Services – Request for Highly Confidential Treatment and Confidentiality Justification*

Dear Ms. Dortch:

CenturyLink hereby requests highly confidential treatment for the attached CenturyLink Petition for Forbearance. This request also covers the attachments to the Petition. The Petition and the Declaration of Emily Binder (Binder Declaration) contain certain information in the text that is highly confidential. In addition, the financial analyst reports in Attachments C and G through L to the Petition are highly confidential in their entirety. For the non-redacted version of the Petition and Binder Declaration, each page, along with the cover pages for Attachments C and G through L, have been marked "**HIGHLY CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – COPYING PROHIBITED.**"¹ As such, CenturyLink requests that the non-redacted versions of the Petition, the Binder Declaration and Attachments C and G through L be withheld from public inspection. CenturyLink also requests that no further copies be made of material marked as highly confidential.

CenturyLink is submitting the non-redacted versions of its Petition, the Binder Declaration and Attachments C and G through L pursuant to Commission rules 47 C.F.R. § 0.457 and 0.459. The highly confidential information included in these documents is competitively sensitive information and thus should not be available for public inspection, nor subject to further copying. Such information would not ordinarily be made available to the public (except that the analyst

¹ CenturyLink will modify the language in future filings in accordance with the language of the Protective Orders issued after the Petition is docketed.

Ms. Marlene H. Dortch
February 23, 2012
Page 2
Redacted – For Public Inspection

reports in Attachments C and G through L would be available to the public for a fee). Release of the highly confidential information in the Petition and Binder Declaration would have a substantial negative competitive impact on CenturyLink; likewise, release of the analyst reports in Attachments C and G through L without charge would have a substantial negative financial impact on the vendors that created the reports. Accordingly the non-redacted information in question is appropriate for non-disclosure under sections 0.457(d) and 0.459 of the Commission's rules. Pursuant to 47 C.F.R. § 0.459(b), CenturyLink provides justification for the highly confidential treatment of this information in the Appendix to this letter.

Because it was not feasible to separate out the highly confidential information, *see* 47 C.F.R. § 0.459(a), without destroying the integrated nature of the information presented in the Petition and Binder Declaration, CenturyLink is also submitting today under separate cover redacted versions of the Petition and Binder Declaration, along with the non-confidential attachments to the Petition. The redacted versions of the Petition and Binder Declaration are marked "**REDACTED – FOR PUBLIC INSPECTION**," with the highly confidential information redacted. Attachments C and G through L have been omitted in their entirety in the redacted submission.

For the redacted version of the Petition, CenturyLink is providing an original and four copies. For the non-redacted versions of the Petition, CenturyLink is providing one original copy. For both the redacted and non-redacted versions of this submission, CenturyLink is providing an extra copy, to be stamped and returned to the courier. In addition, CenturyLink is providing via courier three complete copies (redacted and non-redacted versions, including highly confidential material) of the Petition and associated documents to Lisa Gelb of the Wireline Competition Bureau. CenturyLink is also transmitting a copy of the non-redacted version of its Petition via e-mail to forbearance@fcc.gov and serving a copy of the redacted version of its Petition on the FCC's contractor, Best Copy and Printing, Inc.

This letter includes no highly confidential information and the text is the same in both the non-redacted and redacted versions except for the confidentiality markings.

Please contact me via the above contact information or Jeb Benedict in CenturyLink's Federal Relations office (202-429-3114) if you have any questions.

Sincerely,

/s/ Craig J. Brown

Attachments

cc: Lisa Gelb (via courier) (three copies of redacted and non-redacted)
forbearance@fcc.gov (redacted)
Best Copy and Printing, Inc. (redacted)

APPENDIX

Confidentiality Justification

CenturyLink requests highly confidential treatment of the information provided in its Petition, the Declaration of Emily Binder (Binder Declaration) and Attachments C, G, H, I, J, K and L because this information is competitively sensitive and its disclosure would have a negative competitive impact on CenturyLink and the vendors that created Attachments C and G through L were it made publicly available. Such information would not ordinarily be made available to the public (except that the reports in Attachments C and G through L are made available by the vendors for a fee), and should be afforded highly confidential treatment under both 47 C.F.R. §§ 0.457 and 0.459.

47 C.F.R. § 0.457

Specific information in the Petition and the Binder Declaration is highly confidential and proprietary to CenturyLink as “commercial or financial information” under section 0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary information in connection with CenturyLink’s ongoing business plans and operations. The financial analyst reports in Attachments C and G through L are highly confidential and proprietary to the vendors that created those reports as “trade secrets and commercial or financial information” under section 0.457(d). Disclosure of such information to the public without charge would reveal company-sensitive proprietary information in connection with the business plans and operations of the vendors that created the reports in Attachments C and G through L. Therefore, in the normal course of Commission practice this information should be considered “Records not routinely available for public inspection.”

47 C.F.R. § 0.459

Specific information in the Petition and the Binder Declaration, as well as Attachments C and G through L, is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

Information for which highly confidential treatment is sought

CenturyLink requests that specific information in the Petition and the Binder Declaration (set off with brackets and highly confidential markings) as well as Attachments C and G through L, be treated on a highly confidential basis under Exemption 4 of the Freedom of Information Act. This information is competitively sensitive data that CenturyLink and the vendors that created the reports in Attachments C and G through L maintain as confidential and do not normally make available to the public (without charge in the case of the vendor reports). Release of the information would have a substantial negative competitive impact on CenturyLink and the report vendors, respectively. The highly confidential information contained in the non-redacted version of CenturyLink’s Petition and Binder Declaration, as well as in Attachments C and G through L

is marked “**HIGHLY CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – COPYING PROHIBITED.**”

Commission proceeding in which the information was submitted

The information is being submitted in connection with CenturyLink’s Petition for Forbearance Pursuant to 47 U.S.C. §160(c) from Dominant Carrier and Certain *Computer Inquiry* Requirements on Enterprise Broadband Services, which will be docketed at a later date.

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

The competitive information designated as highly confidential in the Petition and Binder Declaration is detailed information regarding the prices for certain CenturyLink services. As noted above, this data is competitively sensitive information that is not normally released to the public, as such release would have a substantial negative competitive impact on CenturyLink.

Attachments C and G through L contain proprietary analyst reports regarding the telecommunications industry that are typically disclosed only on a subscription basis. These reports are not normally released to the public without charge, as such release would cause substantial competitive harm to the vendors that created the reports.

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

This type of commercial information 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 the release of this kind of information likely would produce competitive harm. Indeed, the Commission has frequently permitted highly confidential treatment of the type of information in question. CenturyLink confirms that release of the information designated as highly confidential in the Petition and Binder Declaration would cause it substantial competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of CenturyLink’s business. Likewise, the vendors that created the analyst reports in Attachments C and G through L have represented to CenturyLink that release of those reports to the public without charge would cause the vendors substantial competitive harm by disclosing the reports to potential purchasers of the reports.

Measures taken by CenturyLink and the report vendors 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 non-public information disclosed in the Petition, the Binder Declaration and Attachments C and G through L as highly confidential and has protected

it from public disclosure to parties outside the company. The vendors that created the analyst reports in Attachments C and G through L also have treated those reports as highly confidential and have protected them from public disclosure without a fee.

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

CenturyLink cannot determine at this time any date on which this information should not be considered confidential or would become stale for purposes of the current matters, except that the information would be handled in conformity with general CenturyLink records retention policies, absent any continuing legal hold on the data.

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

Under applicable Commission 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.

REDACTED – FOR PUBLIC INSPECTION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
CenturyLink’s Petition for Forbearance Pursuant) WC Docket No. 12-_____
to 47 U.S.C. § 160(c) from Dominant Carrier and)
Certain *Computer Inquiry* Requirements on)
Enterprise Broadband Services)

CENTURYLINK PETITION FOR FORBEARANCE

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EXECUTIVE SUMMARY

Over the past three years, the Commission has steadily focused on the goal of accelerating the availability and quality of broadband services in America -- “the great infrastructure challenge of the early 21st century.” In adopting the National Broadband Plan, the Commission recognized the need for policies that would facilitate both private sector investment in wired and wireless networks and technologies, and competition among broadband providers. In this petition, CenturyLink seeks modest action by the Commission that will further both policies. The requested forbearance will enable CenturyLink to provide enterprise broadband services, such as Ethernet services, through the simple, uniform commercial arrangements purchasers of those services seek -- the same arrangements that CenturyLink’s competitors already offer today.

CenturyLink’s enterprise broadband services currently are subject to a disjointed set of regulations that vary depending on the CenturyLink affiliate that provides those services. This disparate regulation -- and, particularly, lingering dominant carrier regulation and *Computer Inquiry* tariffing requirements -- precludes CenturyLink from entering into the streamlined arrangements that purchasers of these services demand in today’s competitive marketplace. Such purchasers include wireless providers seeking Ethernet services to increase backhaul capacity to thousands of cell sites, in order to keep up with exploding demand for, and extend the reach of, mobile broadband services.

The requested forbearance will remove this artificial, and plainly unnecessary, roadblock to broadband deployment and competition. It will permit CenturyLink to provide simple, customized nationwide offerings of its enterprise broadband services across its operations, in

competition with other providers, including market leaders AT&T and Verizon. By enabling CenturyLink to compete more effectively, and eliminating its tariffs as a pricing umbrella, forbearance will also put downward pressure on prices for these services. In these ways, the requested relief will genuinely benefit all customers, while furthering the goals articulated in the National Broadband Plan and the Commission's initiative to eliminate outmoded and excessively burdensome regulations.

The requested forbearance is fully consistent with the Commission's precedent. Enterprise broadband services are unlike other services offered by incumbent local exchange carriers (ILECs). The Commission has consistently found that the market for these services is unquestionably competitive. It has found that ILECs are not dominant in this market. It has found that outdated monopoly regulation of these services is unnecessary to protect consumers, and in fact hampers competition. It has found, in a long series of orders, that forbearance from dominant carrier regulation is appropriate for these services. This petition asks the Commission to do nothing more than extend those findings to portions of CenturyLink's operations that have, to date, not received that forbearance.

As the Commission correctly predicted in granting such forbearance to Embarq and Qwest (as well as AT&T, ACS of Anchorage and Frontier), elimination of dominant carrier regulation permits a carrier to respond more quickly to competing service offerings and meet customer requests for arrangements specifically tailored to their individualized needs. Indeed, legacy Embarq and Qwest have entered into approximately 270 commercial agreements with enterprise customers -- agreements that are individually negotiated in a way that could never be done through standardized tariff offerings. Since that time, the average prices for the services

covered by those forbearance petitions have declined substantially. With this petition, CenturyLink seeks to extend the customer benefits of ending unnecessary regulation across the entirety of the post-merger company, in line with other providers of enterprise broadband services.

The requested relief easily satisfies the statutory criteria for forbearance: (1) neither dominant carrier regulation, nor the *Computer Inquiry* tariffing requirement, is necessary to ensure just, reasonable and nondiscriminatory rates for enterprise broadband services, particularly given that more than 30 providers offer these services on a national or regional basis today; (2) such regulation also is not necessary to protect purchasers of these services, and in fact precludes them from obtaining the simple, individualized serving arrangements that they demand for these services; and (3) granting the petition will further the public interest by facilitating the deployment of wired and wireless broadband services, enhancing competition and eliminating outmoded and excessively burdensome regulation.

The petition would have no impact on the Commission's regulation of DS1 and DS3 services or the Commission's pending review of special access regulation. CenturyLink likewise will continue to be subject to the remaining requirements of Title II, including general common carrier obligations and section 208 complaint procedures.

Given that this petition raises no new issues of law or fact, the Commission should grant it expeditiously, and can do so through delegated authority.

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ATTACHMENTS

Attachment A: Services for Which CenturyLink is Seeking Forbearance

Attachment B: Identification of Related Matters Pursuant to 47 C.F.R. § 1.54(c)

Attachment C: Frost & Sullivan Report: Demystifying Carrier Ethernet Services: No One Size Fits All, 2011 (Highly Confidential)

Attachment D: Declaration of Emily Binder (includes Highly Confidential information)

Attachment E: National and Regional Providers of Enterprise Broadband Services

Attachment F: Declaration of Ryan Schwertner

Attachment G: Vertical Systems Group Report: Business Broadband Share Analysis, 2012 (Highly Confidential)

Attachment H: Frost & Sullivan Report: Retail Carrier Ethernet Services Market Update, 2011 (Highly Confidential)

Attachment I: Frost & Sullivan Report: Wholesale Carrier Ethernet Services Market Update, 2011 (Highly Confidential)

Attachment J: IDC Report: Market Analysis – U.S. Carrier Ethernet Services 2011-2015 Forecast (Highly Confidential)

Attachment K: The Insight Research Corporation Report: Carriers and Ethernet Services: Public Ethernet in Metro & Wide Area Networks 2011-2016 (Highly Confidential)

Attachment L: Frost & Sullivan Report: U.S. Mobile Backhaul Services Market: Wireless Service Providers Spending Trends, October 2011 (Highly Confidential)

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)
CenturyLink’s Petition for Forbearance Pursuant) WC Docket No. 12- _____
to 47 U.S.C. § 160(c) from Dominant Carrier and)
Certain *Computer Inquiry* Requirements on)
Enterprise Broadband Services)

CENTURYLINK PETITION FOR FORBEARANCE

I. INTRODUCTION

Pursuant to section 10 of the Telecommunications Act of 1996, and sections 1.53 and 1.54 of the Commission’s rules,¹ CenturyLink hereby petitions the Commission for forbearance from dominant carrier regulation and the *Computer Inquiry* tariffing requirement with respect to its packet-switched and optical transmission services (hereinafter, “enterprise broadband services”) that are still subject to those obligations.²

CenturyLink’s enterprise broadband services currently are subject to a disjointed set of regulations that vary depending on the CenturyLink affiliate that provides those services. While most of legacy Embarq and Qwest’s enterprise broadband services are detariffed, all such services provided by legacy CenturyTel are subject to dominant carrier regulation, including tariff requirements and full price cap regulation. This disparate regulation precludes CenturyLink from entering into the streamlined arrangements that purchasers of these services demand in today’s competitive marketplace. Such purchasers include wireless providers seeking

¹ 47 C.F.R. §§ 1.53, 1.54.

² CenturyLink seeks forbearance from both dominant carrier regulation and certain *Computer Inquiry* requirements that otherwise apply to the specified enterprise broadband services. For convenience, CenturyLink sometimes refers to this request as seeking “nondominant treatment” for these services.

Ethernet services to increase backhaul capacity to thousands of cell sites, in order to keep up with exploding demand for, and extend the reach of, mobile broadband services.

CenturyLink is well qualified to offer such services over its expansive footprint, which includes many rural areas. In too many cases, however, CenturyLink's inability to offer simple, customized arrangements has led customers to dismiss CenturyLink as a potential provider of these services. In others, even where CenturyLink has won the customer, it has required needlessly complicated transactions that vainly attempt to emulate the straightforward, uniform arrangement truly sought by the customer. In either case, continuing dominant carrier regulation frustrates customers' desired serving arrangements -- potentially slowing the deployment of broadband services -- and imposes inefficient, outdated regulation in a dynamic, competitive marketplace.

The requested forbearance will further the goals articulated in the National Broadband Plan by allowing CenturyLink to provide enterprise broadband services through the simple, uniform commercial arrangements purchasers of those services seek -- the same arrangements that CenturyLink's competitors offer today.³ By enabling CenturyLink to compete more

³ For example the Plan expressed the goal that by 2020, the United States would "lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation." National Broadband Plan (2010) at 25. Achievement of this goal obviously depends heavily on the availability in all areas of robust backhaul networks. More recently, the Commission overhauled the universal service and intercarrier compensation systems "to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation." *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking,

effectively, and eliminating its tariff as a pricing umbrella, forbearance will also put downward pressure on prices for these services. Forbearance additionally will enable the post-merger company to compete most effectively for enterprise and government customers against other providers, including market leaders AT&T and Verizon. In these ways, the requested relief will genuinely benefit all customers.

Forbearance from the regulatory provisions in question -- dominant carrier regulation and the *Computer Inquiry* tariffing requirement -- also will further the Commission's initiative to eliminate outmoded and excessively burdensome regulations, consistent with Executive Order 13579.⁴ This relief meets each of the factors the Commission considers to identify regulations that have outlived their usefulness.⁵

The requested forbearance is fully consistent with the Commission's precedent. More than four years ago, the Commission granted identical relief to AT&T, ACS of Anchorage, Embarq, Frontier and Qwest in the *Enterprise Broadband Forbearance Orders*.⁶ In doing so, the Commission found that the market for enterprise broadband services is highly competitive, and that dominant carrier regulation is therefore unnecessary and ill-suited for those services. This

FCC 11-161 ¶ 1 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *Order clarifying rules (Clarification Order)*, DA 12-147, rel. Feb. 3, 2012, Erratum, rel. Feb. 6, 2012; *pets for recon. pending*; *pets. for rev. of the Report and Order pending, sub nom. Direct Communications Cedar Valley, et al. v. FCC*, (10th Cir. Nos. 11-9581, et al.).

⁴ See *Preliminary Plan for Retrospective Analysis of Existing Rules* (rel. Nov. 7, 2011).

⁵ See *id.* at 7.

⁶ Through operation of law, Verizon's enterprise broadband services also are free from dominant carrier regulation. See FCC News Release, *Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law* (rel. Mar. 20, 2006).

petition asks the Commission to do nothing more than extend those findings to portions of CenturyLink's operations that have, to date, not received that forbearance.

In the *Enterprise Broadband Forbearance Orders*, the Commission predicted that elimination of dominant carrier regulation would permit Embarq and Qwest to respond more quickly to competing service offerings and meet customer requests for arrangements specifically tailored to their individualized needs. That is exactly what has occurred. Legacy Embarq and Qwest have entered into approximately 270 commercial agreements with enterprise customers -- agreements that are individually negotiated in a way that could never be done through standardized tariff offerings. Since that time, the average prices for the services covered by those forbearance petitions have declined significantly. With this petition, CenturyLink seeks to extend the customer benefits of ending unnecessary regulation across the entirety of the post-merger company, in line with other providers of enterprise broadband services.

The requested relief easily satisfies the statutory criteria for forbearance:⁷

- (1) Neither dominant carrier regulation, nor the *Computer Inquiry* tariffing requirement, is necessary to ensure just, reasonable and nondiscriminatory rates for enterprise broadband services. On the contrary, this outmoded regulation harms competition, as the Commission has repeatedly found;
- (2) Such regulation also is not necessary to protect purchasers of these services, and in fact precludes them from obtaining the simple, individualized serving arrangements that they demand for these services; and
- (3) Granting the petition will further the public interest by facilitating the deployment of wired and wireless broadband services, enhancing competition and eliminating outmoded and excessively burdensome regulation.

⁷ See 47 U.S.C. § 160(a).

The petition would have no impact on the Commission's regulation of DS1 and DS3 services or the Commission's pending review of special access regulation. CenturyLink likewise will continue to be subject to the remaining requirements of Title II, including general common carrier obligations and section 208 complaint procedures.

Given that this petition raises no new issues of law or fact, the Commission should grant it expeditiously, and can do so through delegated authority.

II. BACKGROUND

CenturyLink seeks the same uniform nondominant regulation of its enterprise broadband services that applies to those services provided by other ILECs and CLECs alike, in order to provide customers the individually tailored contractual arrangements they seek.

A. Unlike CenturyLink, Other Major Providers of Enterprise Broadband Services Are Uniformly Regulated as Nondominant with Respect to Those Services.

With the exception of CenturyLink, the major providers of enterprise broadband services are uniformly regulated as nondominant with respect to the provision of those services. Following the grant of Verizon's forbearance petition by operation of law in 2006,⁸ the Commission issued a series of orders forbearing from dominant carrier regulation and certain *Computer Inquiry* rules with respect to the enterprise broadband services provided at that time by AT&T, ACS of Anchorage, Embarq, Frontier and Qwest.⁹ Through these orders, the

⁸ *Verizon Telephone Companies' Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law*, News Release, WC Docket No. 04-440 (2006).

⁹ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services, Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with*

Commission deliberately put these ILECs on similar regulatory footing with non-ILEC providers of these services, which were already regulated as nondominant.

B. In Contrast, CenturyLink's Enterprise Broadband Services Are Subject to Widely Varying Regulation, Which Undermines CenturyLink's Ability to Compete Effectively.

Today, an enterprise broadband service provided by CenturyLink may be subject to nondominant regulation, pricing flexibility or full price cap regulation, all depending on which CenturyLink ILEC affiliate -- Legacy Qwest, Embarq or CenturyTel -- provides that service. Legacy Qwest is able to offer customers individually-tailored commercial agreements for virtually all of its enterprise broadband services, free from tariff and other dominant carrier regulation. Legacy Embarq can provide its customers similar flexibility with respect to most of its enterprise broadband services, but not for Ethernet Virtual Private Line (EVPL), its most popular Ethernet service. That is because Embarq did not offer EVPL service at the time the Commission granted Embarq forbearance in 2007. Thus, even though it is actually a new entrant

Respect to Its Broadband Services, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007) (AT&T Title II and Computer Inquiry Forbearance Order); Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (ACS Dominance Forbearance Order); Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007) (Embarq Title II and Computer Inquiry Forbearance Order); Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008) (Qwest Title II and Computer Inquiry Forbearance Order). This petition refers to these orders collectively as the Enterprise Broadband Forbearance Orders.

in the EVPL market, Embarq must provide EVPL via general tariff, except in those limited geographic areas where Embarq has pricing flexibility that enables it to negotiate contract tariffs covering those areas.

At the other end of the spectrum, legacy CenturyTel is subject to price cap regulation for all services in all areas. It has no ability to diverge from the rates, terms and conditions in its generally available tariffs, except through the laborious and time-consuming process of modifying its tariff -- a process that is not suitable for meeting the unique demands of particular customers in today's intensely competitive market for these services.

As discussed below, this disparate regulation has had a significant, negative impact on enterprise broadband customers. These regulatory constraints preclude CenturyLink from offering those customers the simple, tailored arrangements they seek. In fact, these regulatory variances have also prevented CenturyLink from realizing some of the synergies inherent in the CenturyTel/Embarq and CenturyLink/Qwest mergers. These include, in particular, the potential to expand Qwest's enterprise and government business to compete more effectively against larger, more established players in the enterprise broadband market, including leaders AT&T and Verizon.¹⁰

¹⁰ See *In the Matter of Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4198 ¶ 6 (2011) (*CenturyLink-Qwest Merger Order*).

C. CenturyLink Seeks Forbearance for Its Enterprise Broadband Services that Are Still Subject to Dominant Carrier Regulation and the *Computer Inquiry* Tariffing Obligation.

Consistent with section 1.54(a)(3) and (4) of the Commission's rules,¹¹ CenturyLink identifies the services and geographic areas for which the requested forbearance is sought. CenturyLink seeks to rationalize the regulation of its enterprise broadband services by extending to all of its enterprise broadband services the forbearance that the Commission granted for Embarq and Qwest in 2007 and 2008, respectively.¹²

The specific services for which CenturyLink is seeking forbearance are listed and described in Attachment A. They include Ethernet-Based Services, Frame Relay Services, ATM Services, Video Transmission Services and Optical Network Services. With the exception of two Embarq services, all of the services identified in Attachment A are offered by legacy CenturyTel.

Each of these services fits within the definition of enterprise broadband services the Commission employed in the *Enterprise Broadband Forbearance Orders*: (1) existing non-TDM-based, packet-switched services capable of transmitting 200 kbps or greater in each direction; and (2) existing non-TDM-based optical transmission services.¹³ CenturyLink seeks this relief throughout its ILEC service territories.

¹¹ 47 C.F.R. § 1.54(a)(3), (4).

¹² *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd 19478; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd 12260.

¹³ See, e.g., *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18705 ¶ 12.

D. CenturyLink Seeks Forbearance from the Same Requirements from which the Commission Relieved Petitioning ILECs in the *Enterprise Broadband Forbearance Orders*.

Consistent with section 1.54(a)(1) and (e)(1),¹⁴ CenturyLink identifies the rules and requirements from which forbearance is sought. In the *Enterprise Broadband Forbearance Orders*, the Commission granted forbearance from application of the following regulatory requirements to the specified services covered by those orders:

- Dominant carrier tariff filing and price cap regulations, including the duty to file cost support;¹⁵
- Dominant carrier discontinuance requirements;¹⁶
- Dominant carrier domestic transfer of control requirements;¹⁷ and
- *Computer Inquiry* tariffing requirements.¹⁸

¹⁴ 47 C.F.R. § 1.54(a)(1), (e)(1).

¹⁵ See 47 U.S.C. §§ 203, 204(a)(3); 47 C.F.R. §§ 61.31-61.59. See also *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18726 ¶ 36, 18729 ¶ 42.

¹⁶ See 47 C.F.R. §§ 63.71. See also, *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18726-27 ¶ 37; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19498-99 ¶ 36; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12282 ¶ 40.

¹⁷ See 47 C.F.R. § 63.03. See also *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18726-27 ¶ 37; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19498-99 ¶ 36; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12282 ¶ 40.

¹⁸ *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 77 FCC 2d 384 (1980) (*Computer II Final Decision*), recon., 84 FCC 2d 50 (1980), further recon., 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983). See also *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18735-36 ¶¶ 59-62; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19505-06 ¶¶ 50-55. In the AT&T and Qwest orders, the FCC also granted forbearance from application of BOC-specific *Computer Inquiry* requirements to those enterprise broadband services, except to the extent they imposed the same

CenturyLink seeks the same forbearance here for the enterprise broadband services listed in Attachment A. Consistent with section 1.54(c) of the Commission's rules,¹⁹ Attachment B identifies pending proceedings in which CenturyLink has taken a position regarding relief that is identical to, or comparable to, the relief sought in this petition.

III. THE COMMISSION SHOULD ACT ON THIS PETITION PURSUANT TO DELEGATED AUTHORITY

This petition should not be controversial. CenturyLink seeks the same forbearance for the same types of services that the Commission addressed in the *Enterprise Broadband Forbearance Orders*. In those orders, the Commission addressed all relevant issues of law and fact underlying this petition. Specifically, it found that:

- There are numerous competing providers of enterprise broadband services nationwide, and the marketplace generally appears highly competitive.²⁰
- The purchasers of these services are sophisticated and likely to be aware of, and take advantage of, the alternatives available to them.²¹

transmission access or nondiscrimination requirements that apply to all non-BOC, facilities-based wireline carriers in their provision of enhanced services. See *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18733-35 ¶¶ 53-58; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12288-90 ¶¶ 54-60. Since this petition requests forbearance only for CenturyLink's Embarq and CenturyTel affiliates, those BOC-specific requirements are not relevant here.

¹⁹ 47 C.F.R. § 1.54(c).

²⁰ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18719-20 ¶ 23; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19491-92 ¶ 22; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12275-76 ¶ 26.

²¹ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18720 ¶ 24; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19492-93 ¶ 23; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12276-77 ¶ 27.

- Non-ILEC competitors can economically deploy OCn-level facilities and rely on TDM-based loops (in addition to their own facilities) to provide packetized broadband services.²²
- The contribution of tariffing requirements, and the accompanying cost support and other requirements, to ensuring just, reasonable, and nondiscriminatory charges and practices for these services is negligible.²³
- OCn-level facilities produce revenue levels that can justify the high cost of loop construction, and customers purchasing services over such facilities typically enter into long-term contracts that enable competing providers to recover their construction costs over lengthy periods.²⁴
- Continuing to apply dominant carrier regulation to the specified enterprise broadband services would create market inefficiencies, inhibit carriers from responding quickly to rivals' new offerings and impose other unnecessary costs. In contrast, detariffing these services will facilitate innovative integrated service offerings designed to meet changing market conditions and will increase customers' ability to obtain service arrangements that are specifically tailored to their individual needs, and enable the ILEC to respond quickly and creatively to competing service offers.²⁵
- Dominant carrier regulation of an ILEC's enterprise broadband services makes it unnecessarily difficult for it to negotiate nationwide arrangements tailored to the needs of large enterprise customers with geographically dispersed locations, because

²² *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18720-22 ¶¶ 25-26; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19493-95 ¶¶ 24-25; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12277-78 ¶¶ 28-29.

²³ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18723-24 ¶ 30; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19496 ¶ 29; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12279-80 ¶ 33.

²⁴ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18724-25 ¶ 32; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19496-97 ¶ 31; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12280 ¶ 35.

²⁵ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18725 ¶ 33; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19497 ¶ 32; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12280-81 ¶ 36.

its tariff filings necessarily provide competitors with notice of its pricing strategies and competitive innovations.²⁶

- The Commission's pricing flexibility rules do not provide sufficient regulatory relief to allow an ILEC to meet its customers' needs and compete effectively.²⁷
- Eliminating dominant carrier tariffing and pricing requirements with respect to an ILEC will make the ILEC a more effective competitor for enterprise broadband services, which in turn will increase even further the amount of competition in the marketplace.²⁸
- Forbearance from the application of dominant carrier regulation to these services also will promote the public interest by furthering the deployment of advanced services.²⁹
- Forbearance from the application of dominant carrier tariffing and pricing regulation to an ILEC's existing enterprise broadband services satisfies each of the three requirements for forbearance in section 10(a);³⁰
- Forbearance from the application of (i) dominant discontinuance requirements, (ii) dominant domestic transfer of control requirements and (iii) *Computer Inquiry*

²⁶ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18730-31 ¶ 46; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19503 ¶ 45; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12286-87 ¶ 49.

²⁷ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18725-26 ¶ 34; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19497-98 ¶ 33; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12281 ¶ 37.

²⁸ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18726 ¶ 35; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19498 ¶ 34; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12282 ¶ 38.

²⁹ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18731 ¶ 47; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19503-04 ¶ 46; *Qwest Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 12287 ¶ 50.

³⁰ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18723-27 ¶¶ 30-37, 43, 46; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19496-98 ¶¶ 29-35, 19502 ¶ 42, 19503 ¶ 45; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12279-82 ¶¶ 33-39.

tariffing requirements to an ILEC's existing enterprise broadband services satisfies each of the three requirements for forbearance in section 10(a);³¹

These findings were upheld by the D.C. Circuit on appeal.³²

Under the Commission's rules, the Common Carrier Bureau possesses ample authority to address CenturyLink's petition for forbearance on delegated authority. The petition presents no "novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."³³ In the time since the Commission's prior forbearance orders, the market for these services has become only more competitive. The Commission can, and reasonably should, treat this petition as a "me-too" petition, suitable for decision on delegated authority.

IV. UNDER ANY REASONABLE MEASURE, CENTURYLINK IS ENTITLED TO THE REQUESTED FORBEARANCE

In 2010, the Commission established a new analytical framework to evaluate Qwest's petition seeking forbearance from certain Commission regulations in the Phoenix Metropolitan

³¹ *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18720-22 ¶¶ 25-26, 18735-36 ¶¶ 59-62; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19493-95 ¶¶ 24-25, 19505-06 ¶¶ 51-54; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12277-78 ¶¶ 28-29. See also *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12289 ¶¶ 56-59 (forbearing from BOC-specific *Computer Inquiry* requirements, except to the extent they impose the same transmission access or nondiscrimination requirements that apply to all non-BOC, facilities-based wireline carriers in their provision of enhanced services).

³² *Ad Hoc Telecomm'ns Users Committee v. FCC*, 572 F.3d 903 (2009).

³³ 47 C.F.R. §§ 0.91(m); 0.291(a)(2). Indeed, the Commission has granted forbearance petitions on delegated authority in the past. See, e.g., *SBC Communications Inc. for Forbearance of Structural Separation Requirements and Request for Immediate Relief in Relation to the Provision of Nonlocal Directory Assistance Services*, Memorandum Opinion and Order, 18 FCC Rcd 8134 (Wireline Comp. Bur. 2003); *Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services*, Memorandum Opinion and Order, 14 FCC Rcd 21484 (Comm. Car. Bur. 1999).

Statistical Area.³⁴ The Commission has given no indication that this framework applies to petitions such as this.³⁵ Nor does CenturyLink believe it should, particularly given the Commission's previous determinations in the *Enterprise Broadband Forbearance Orders*.³⁶ In an abundance of caution, however, CenturyLink demonstrates in this section that it is entitled to the requested forbearance under any reasonable standard. This demonstration is preceded by a discussion of the applicable product and geographic markets.

A. Product Market.

In the *Enterprise Broadband Forbearance Orders*, the Commission analyzed the state of competition for these services as a group. That continues to be the proper approach given that there is not a stand-alone market for any of these services, but rather a wider market for higher-capacity services provided to enterprise customers through various technologies. In short, the evolving nature of enterprise broadband services makes it appropriate to evaluate these services

³⁴ *Petition of Qwest Corporation for Forbearance to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010).

³⁵ See *Wireline Competition Bureau Seeks Comment on Applying the Qwest Phoenix Order Analytic Framework in Similar Proceedings*, 25 FCC Rcd 8013, 8014 (2010) (seeking comment on the application of the analytic framework to "other similar requests for regulatory relief, including the pending remands of the *Verizon 6-MSA Forbearance Order* (WC Docket No. 06-172) and the *Qwest 4-MSA Forbearance Order* (WC Docket No. 07-97)"). The Commission has previously noted the dissimilarities between the *Verizon 6-MSA Order* and the *Enterprise Broadband Forbearance Orders* that would warrant use of a "similar type of market analysis" in the two types of orders. FCC Brief, *Ad Hoc*, at 34 (filed Sept. 17, 2008) (citing Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 706(a), 47 U.S.C. § 157).

³⁶ Qwest also filed a challenge in the Tenth Circuit of the Commission's analytical framework in the *Phoenix Forbearance Order*. *Qwest Corporation v. FCC* (10th Cir. No. 10-9543). That appeal remains pending.