significant rural profile, CenturyLink is uniquely qualified to help deliver the benefits of broadband to widely dispersed areas.

For example, CenturyLink's Ethernet backhaul services can play a key role in enabling wireless providers to expand mobile broadband coverage to areas where it is not available today. CenturyLink's expansive local network and robust long haul facilities allow the company to help wireless providers quickly upgrade their cell sites to meet escalating demands for additional bandwidth. At the same time, however, lingering dominant carrier regulation prevents CenturyLink from entering into the simple, customized arrangements that wireless providers seek, which in turn slows down the negotiation and contracting process, ultimately delaying the rollout of broadband services. Grant of the petition will eliminate these regulatory hindrances and permit CenturyLink to meet the needs of wireless providers and their end user customers.

As the Commission has noted, "the ability to negotiate in an unencumbered fashion is not only essential to enable competition in the broadband market but to encourage investment in, and development of, new broadband services [and] . . . these requirements impose significant unnecessary transactions costs on petitioners' broadband business."[129] With the requested forbearance, CenturyLink's enterprise broadband services would be subject to the same baseline Title II regulation that applies to its competitors (except for Verizon, which is subject to Title I regulation for these services). By regulating CenturyLink on the same terms as its nondominant competitors, the Commission "will encourage all potential investors in broadband network

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[129] *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18723 ¶ 29; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19496 ¶ 28; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12279 ¶ 32.

platforms, and not just a particular group of investors, to be able to make market-based, rather than regulatory-driven, investment and deployment decisions."[130] Thus, the requested forbearance will also further the goals of section 706 and 7(a) of the Act, which established a national policy of "encourage[ing] the provision of new technologies and services to the public."[131]

Second, the requested forbearance will eliminate "outmoded" and "excessively burdensome" regulatory provisions, consistent with the Commission's implementation of Executive Order 13579. In July 2011, President Obama directed independent regulatory agencies to develop a plan for promoting "retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned."[132] In November, the Commission issued a preliminary plan for retrospective analysis of its existing rules, consistent with the Executive

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[130] *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18732 ¶ 49; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19504 ¶ 48; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12288 ¶ 52.

[131] 47 U.S.C. § 157(a). *See also 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*, 23 FCC Rcd at 12287 ¶ 50. In adopting the *Enterprise Broadband Forbearance Orders*, the Commission "'heeded Congress's direction to 'utiliz[e]' its section 10 'regulatory forbearance' power to 'encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.'" FCC Brief, *Ad Hoc,* at 1 (citing Telecommunications Act of 1996, Pub. L No. 104-104, 110 Stat. 56, § 706(a), 47 U.S.C. § 157).

[132] Executive Order 13579, *Regulation and Independent Regulatory Agencies*, 76 Fed. Reg. 41587 § 2 (July 14, 2011).

Order.[133] In that plan, the Commission identified three factors for determining whether a regulation is "ripe" for retrospective analysis:

(1) The regulation "has been affected by changes in technology or new scientific research or changes in market structure";

(2) The regulation "has a disproportionate or undue burden on particular entities, has caused unintended negative effects, or could result in greater net benefits to the public if modified"; and

(3) The regulation "has been subject to frequent requests for waivers by affected stakeholders or been identified by the public as needing revision."[134]

The dominant carrier regulations in question undoubtedly satisfy each of these criteria: profound "changes in market structure" have resulted in more than 30 national or regional providers of enterprise broadband services; the regulations in question have a "disproportionate" and "undue burden" on CenturyLink and ultimately its customers, and have caused the "unintended negative effect[]" of preventing CenturyLink from entering into the simple, individualized arrangements that these customers seek; and these requirements have been the subject of "frequent requests for waivers," in the form of forbearance petitions that the Commission has repeatedly granted.

Third, the requested forbearance will enhance competition by permitting CenturyLink to leverage the synergies inherent in the CenturyTel-Embarq and CenturyLink-Qwest mergers. The requested forbearance will enable CenturyLink to compete more effectively in the provision of enterprise broadband services and eliminate the "market distortions that asymmetrical regulation

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[133] Preliminary Plan for Retrospective Analysis of Existing Rules (rel. Nov. 7, 2011).

[134] *Id.* at 7.

. . . causes."[135] As described above, continuing dominant carrier regulation of some CenturyLink enterprise broadband services makes it difficult for the company to compete effectively in the provision of these services. Large enterprise customers frequently seek individualized nationwide arrangements covering geographically dispersed locations. CenturyLink cannot satisfy these requests through the tariffing process without significant difficulty,[136] particularly because the company's tariff filings provide competitors with notice of our pricing strategies and new offerings.

Post-merger CenturyLink has the breadth of services and geographic scope to compete effectively against large nationwide competitors, such as AT&T, Comcast and Verizon. As noted, one of CenturyLink's key selling points is its extensive geographic reach -- both in metropolitan and rural areas -- particularly given the synergies inherent in the CenturyTel-Embarq and CenturyLink-Qwest mergers.[137] Today, however, CenturyLink is hobbled with burdensome tariffing regulations that make it exceedingly difficult to offer large enterprise customers the same types of individually-tailored product suites that its competitors provide in normal course.[138] Ultimately, customers will benefit from the ability of all competitors to

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[135] *See 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.

[136] Binder Declaration ¶ 22.

[137] *Id.* ¶¶ 4-5.

[138] *Id.* ¶¶ 15-24.

respond to competing market-based price offerings that take the form of promotions and multi-tiered service packages.[139]

While the Commission's pricing flexibility rules offer some flexibility, it is not sufficient to meet customers' demand for these services. By definition, pricing flexibility is geographically limited and available only in particular areas in which certain triggers are satisfied. Thus, pricing flexibility does not enable CenturyLink to enter into the nationwide arrangements frequently sought by purchasers of enterprise broadband services.[140]

VI. THE COMMISSION SHOULD ALSO FORBEAR FROM THE *COMPUTER INQUIRY* TARIFFING REQUIREMENT WITH RESPECT TO THESE SERVICES

In the *Enterprise Broadband Forbearance* orders, the Commission forbore from the requirement to offer, pursuant to tariff, the basic transmission services underlying an ILEC's enhanced services. CenturyLink seeks that same relief with respect to its enterprise broadband services that are currently subject to dominant carrier regulation. CenturyLink does not seek forbearance from the remaining *Computer Inquiry* rules that apply to other facilities-based providers, including nondominant providers.[141]

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[139] *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18723 ¶ 29; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19496 ¶ 28; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12279 ¶ 32.

[140] As noted these contract-based tariffs also suffer from all the harms of any tariffing requirement, in terms of enabling competitors to adjust their prices in response to CenturyLink's rate changes. *See IXC Forbearance Order*, 11 FCC Rcd at 20744 ¶ 23.

[141] The *Computer Inquiry* rules require that these providers (a) offer as telecommunications services the basic transmission services underlying their enhanced services, and (b) offer those telecommunications services on a nondiscriminatory basis to all enhanced service providers, including their own enhanced services operations. *See AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18735 ¶ 59; *Embarq Title II and Computer Inquiry*

As the Commission previously found, and for the reasons discussed above, competitive pressures for these services are sufficient to satisfy the requirements of section 10(a) with respect to the tariffing requirements in the *Computer Inquiry* rules.[142] In addition, these tariffing requirements present the same problems as dominant carrier tariffing requirements: (1) they undermine competition by enabling CenturyLink's rivals to anticipate CenturyLink's rate changes, while hobbling CenturyLink's ability to respond to competitors' promotions, and (2) they prevent enterprise broadband customers from obtaining the individualized arrangements that they seek.

VII. CONCLUSION

For the foregoing reasons, the Commission should grant the requested forbearance. This action will further the critical goals articulated in the National Broadband Plan, by empowering CenturyLink to meet the needs of its enterprise broadband customers, including mobile broadband providers. The requested forbearance also will eliminate outmoded and unduly burdensome regulatory requirements, consistent with the Commission's plan for implementing Executive Order 13579.

Grant of the petition would be fully consistent with the Commission's precedent. As the Commission found in the *Enterprise Broadband Forbearance Orders*, the benefits of dominant

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Forbearance Order, 22 FCC Rcd at 19505 ¶ 51 (citing *Computer II Final Decision*, 77 FCC 2d at 474-75 ¶ 231); *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12263-64 ¶ 6 and nn. 22, 23, 26 & 27.

[142] *AT&T Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 18735 ¶ 60, 18735-36 ¶ 62; *Embarq Title II and Computer Inquiry Forbearance Order*, 22 FCC Rcd at 19505 ¶ 52, 19505-06 ¶ 54; *Qwest Title II and Computer Inquiry Forbearance Order*, 23 FCC Rcd at 12279-80 ¶¶ 32-35 and notes accompanying this text.

carrier regulation of enterprise broadband services today are "negligible," while the harms of that regulation are substantial. Given intense competition for these services, CenturyLink is in no way a dominant provider of these services, nor could it sustain rates that are unjust, unreasonable or discriminatory. Well aware of the choices available to them, sophisticated purchasers exercise significant bargaining power to obtain the individualized, yet uniform, geographically widespread arrangements that they typically seek.

The requested forbearance will permit CenturyLink to offer these arrangements across its footprint, as its nondominant competitors can already do today. Forbearance therefore will enable CenturyLink to compete more effectively against market leaders, such as AT&T and Verizon, thus realizing the promise of the CenturyTel-Embarq and CenturyLink-Qwest mergers. Ultimately, this translates into more choices for customers, individually tailored serving arrangements to meet their unique needs and increased investment in broadband services and facilities.

Respectfully submitted,

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Its Attorney

February 23, 2012

Attachment A

Attachment A

Services for Which CenturyLink Is Seeking Forbearance

LEGACY CENTURYTEL

- *Ethernet Transport* – Ethernet Transport (ET) service is a high speed data transport service that provides point-to-point data transmissions in a fast packet based protocol. ET is available at 11 transport speeds: 10 Mbps, 20 Mbps, 50 Mbps, 100 Mbps, 150 Mbps, 300 Mbps, 450 Mbps, 600 Mbps, 1 Gbps, 2.5 Gbps and 10 Gbps.

- *Ethernet Virtual Private Line* – Ethernet Virtual Private Line (EVPL) service provides the ability to order Ethernet service where a single connection can support multiple applications with varying Quality of Service (QoS). EVPL is available at transport speeds of: 10 Mbps, 100 Mbps, 1 Gbps and 10 Gbps.

- *Local Transport - Synchronous Optical Channel* – Local Transport is a two-way voice frequency transmission path which permits the transport of calls in the originating direction and in the terminating direction, but not simultaneously. The voice frequency transmission path may be comprised of any form or configuration of plant capable of and typically used in the telecommunications industry for the transmission of voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hz. Local Transport is available at bandwidths of OC3 and OC12.

- *Synchronous Optical Channel Service* – Synchronous Optical Channel Service (SOCS) provides dedicated transport utilizing Synchronous Optical Network (SONET) transmissions standards. SOCS is available at transmission rates of OC3 (155.52 Mbps), OC12 (622.08 Mbps), OC48 (2488.32 Mbps) and OC192 (9953.28 Mbps).

- *Custom Connect* – Custom Connect provides a connection to the Optical Network and a customer's designated premises. Custom Connect may be ordered as switched or special access and is available at OC3, OC12, OC48 and OC192 bandwidth capacity.

- *Frame Relay Access Service* – Frame Relay Access Service (FRAS) is a medium-speed, connection-oriented packet-switched data service that allows for the interconnection of Local Area Networks (LANs) or other compatible end user customer premises equipment for the purpose of connecting to an interstate frame relay network.

- *Asynchronous Transfer Mode Cell Relay Access Service* – Asynchronous Transfer Mode Cell Relay Access Service (ATM-CRS) is a connection-oriented transport service that is based on ATM technology using fixed length, 53-byte cells. ATM-CRS provides high-speed data transport for bandwidth intensive data, voice or video applications with the ability to interconnect multiple locations using the ATM-CRS network.

- *Video Frame Services – Type II (270 Mbps)* – 270 Mbps Video is provided via one non-compressed video signal with audio offered as an option in increments of two stereo channels. 270 Mbps Video is offered as a switched configuration or a dedicated (non-switched) configuration. The switched configuration may be a point-to-point or multi-point arrangement that terminates on ports of the Telephone Company's video switch. The dedicated arrangement is a point-to-point service for the transmission of video without accessing the Telephone Company's video switch.

<u>LEGACY EMBARQ</u>

- *Ethernet Virtual Private Line* – Ethernet Virtual Private Line (EVPL) service provides the ability to order Ethernet service where a single connection can support multiple applications with varying Quality of Service (QoS). EVPL is available at transport speeds of: 10 Mbps, 100 Mbps, 1 Gbps and 10 Gbps.

- *270 Mbps Digital Video Transport Service (DVTS)* – 270 Mbps DVTS is a broadband digital video transport channel with one-way transmission capability and provides 270 Mbps high quality video. The service may include up to four 20 kHz Audio Engineering Society (AES)/European Broadcasting Union (EBU) digital audio signals.

Attachment B

Attachment B

CenturyLink Petition for Forbearance –
Identification of Related Matters Pursuant to 47 C.F.R. § 1.54(c)

Proceeding	Docket	CenturyLink Filing
Petition of tw telecom, et al. to Establish Regulatory Parity in the Provision of Non-TDM-Based Broadband Transmission Services	WC 11-188	12/20/11 Comments
Wireline Competition Bureau Data Practices; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements	WC 10-132; CC 95-20, 98-10	04/01/11 Comments
2010 Biennial Regulatory Review of Regulations Administered By the Wireline Competition Bureau	WC 10-272	02/22/11 Reply Comments
Special Access Rates 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 05-25; RM-10593	01/19/10 Comments (Qwest) 02/24/10 Reply Comments (Qwest and CenturyLink)

Attachment C

REDACTED – FOR PUBLIC INSPECTION

(Highly Confidential Document Omitted in Its Entirety)

Attachment D

REDACTED – FOR PUBLIC INSPECTION

Attachment D

DECLARATION OF EMILY BINDER

I. Introduction

1. My name is Emily Binder. My business address is 5454 West 110th Street, Overland Park, Kansas 66211. I am employed as a Director of Wholesale Pricing, Marketing and Training in CenturyLink's Wholesale Markets Group. In that capacity, I am responsible for all strategic and transactional pricing for data products within the Wholesale Markets group. Additionally, I am responsible for all Marketing and Product Training for the Wholesale Markets group. I have been employed by CenturyLink and its predecessor companies for 28 years, holding positions in Wholesale Markets Product Management, Regulatory Policy, State Regulatory and Network.

2. The purpose of my declaration is to describe the nature of the current national marketplace for enterprise broadband services.[1] Typically purchasers of enterprise broadband services seek to buy those services on a regional or national basis, in order to command better prices and minimize the expense of managing their telecommunications vendors. These customers also generally seek uniform rates, terms and conditions that are tailored to their individual needs. The customers tend to be sophisticated entities with substantial knowledge of telecommunications services and the availability of alternative

[1] By "enterprise broadband services," I mean those telecommunications services capable of transmitting at speeds of 200 kilobits per second in each direction that fall in two categories: (1) packet-switched services, and (2) non-TDM-based optical networking, hubbing and transmission services.

providers of enterprise broadband services. They use this knowledge to strike hard bargains through lengthy and detailed negotiations.

3. I also explain in this declaration how CenturyLink has used the forbearance that applies to most of its enterprise broadband services, in order to offer its customers individualized contract arrangements that are specifically tailored to each customer's individual needs and priorities. This forbearance has also led to increased competition and lower prices for these services. Indeed, since Embarq and Qwest received forbearance from dominant carrier regulation in 2007 and 2008, respectively, the average price for the services subject to that forbearance have declined by **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** percent.

4. At the same time, continued tariffing of some of CenturyLink's enterprise broadband services has hampered CenturyLink's ability to offer such welfare enhancing arrangements on a company-wide basis, capitalizing on the inherent synergies in the CenturyTel-Embarq and CenturyLink-Qwest mergers. In particular, CenturyLink is often unable to meet customers' strong desire for simple, customized business arrangements that provide uniform rates, terms and conditions across CenturyLink's service footprint. The results are lost business, frustrated customers, complicated price structures, and higher prices. Extension of nondominant regulation to all of CenturyLink's enterprise broadband services will enable CenturyLink to provide customers the services they want, on the terms they want, through the arrangements they want.

II. The Marketplace for Enterprise Broadband Services

A. National in Scope

5. The market for enterprise broadband services is national in scope. Providers of these services, including CenturyLink, generally market their broadband data services on a national basis, seeking to provide these services across their entire footprint. One of CenturyLink's selling points is that it has a broad geographic footprint that is not just limited to metropolitan areas. Unlike some competitors, CenturyLink covers both metropolitan areas and many rural areas as well. Through the combination of CenturyTel, Embarq and Qwest, CenturyLink has extended its geographic reach, and customers have sought to capitalize on that larger footprint to consolidate their purchases and obtain discounts based on increased scale.

6. Purchasers of enterprise broadband services likewise view the marketplace on a national basis. They frequently solicit bids through requests for proposal (RFPs) for service to numerous locations throughout the country, and seek a single contract with uniform pricing, terms and conditions. For example, we have recently seen numerous RFPs of regional or national scope for Ethernet services used for backhaul services for wireless providers' cell sites. In some cases, wireless providers are seeking service for hundreds or even thousands of cell sites, in a single transaction. Of CenturyLink's approximately 270 commercial agreements for enterprise broadband services, more than half are with customers with a national presence.

7. The rates, product solution, terms and conditions sought in an RFP can vary significantly from customer to customer. For example one customer may be particularly focused on

obtaining favorable outage credits, while a specified service level agreement (SLA)[2] or a particular type of termination liability may be more important to another customer. For those terms that are important to a customer, uniformity is often critical. For the customer that seeks an SLA, an SLA that varies across CenturyLink's footprint will be of little interest.

8. Aside from obtaining terms of particular importance to them, enterprise broadband customers seek uniform rates, terms and conditions because it makes it much easier for them to manage all aspects of the telecommunications services they are purchasing – from comparing prices to reviewing bills to troubleshooting repairs. Particularly for a customer that is purchasing thousands of circuits each month, varying rates, terms and conditions can make these difficult administrative tasks time consuming and virtually impossible. It can also place a significant burden on smaller wholesale customers, which typically do not have as many resources to manage their relationships with their suppliers. For this reason, some customers, such as relatively small wholesale customers, often prefer to minimize the number of providers from which they obtain telecommunications services, by buying across a larger footprint.

B. Evolving, Interchangeable Services

9. The term "enterprise broadband services" encompasses a large number of high-capacity telecommunications services that are largely interchangeable. In essence, the customer is purchasing a particular amount of bandwidth for a certain price. In determining which service to purchase, a customer compares the price, capacities and features of available

[2] An SLA typically guarantees a particular level of service. For example, it might warrant network availability for a certain percentage of the time during the month, a specified mean time to repair, or satisfaction of technical specifications related to jitter, latency or packet loss.

services and chooses the one that best fits its needs. If the customer's chosen service is unavailable in a particular geographic area the customer can readily find another enterprise broadband service as a substitute. For example, while Ethernet is a popular service today, it is not available throughout CenturyLink's footprint. Where it is not available, customers will generally substitute a SONET-based service.

10. The marketplace for these services is in a constant state of evolution as mature services are gradually replaced with new services that offer attractive features. For example, wireless providers like the flexibility that Ethernet offers because it is easily scalable as demand grows at a particular cell site – particularly in contrast to the jump in capacity (and price) from a DS1 (1.5 Mbps) to a DS3 (45 Mbps). On the other hand, other customers may opt for truly dedicated services, such as SONET, because they place a premium on network reliability and survivability. Finally some customers may still rely on older services such as ATM and Frame Relay, because they have not yet chosen to incur the cost of transitioning to new services.

11. Other distinguishing features of high-capacity enterprise broadband services are that they frequently require new construction and that they tend to generate sufficient revenue to justify such construction where necessary facilities are lacking. CenturyLink typically provides these services over fiber optic facilities, which are not ubiquitous in its last-mile network. Hence, the need for construction. However, the cost of such construction can typically be recovered through the recurring charges (and, if necessary, nonrecurring charges (NRCs)) that the customer pays for the service. In this way, ILECs do not possess an advantage over non-ILEC providers of broadband services.

C. Savvy Customers, Heavily-Negotiated Transactions

12. The purchasers of CenturyLink's enterprise broadband services are varied and include customers from different segments of the industry, such as wireline carriers, wireless providers), ISPs, large businesses – but they share certain common characteristics. They are knowledgeable about telecommunications services; they are aware of the alternatives available to them, both in terms of alternative services and alternative providers, including themselves over their own facilities; and they are adept at using those alternatives to obtain more favorable rates, terms and conditions in their negotiations with CenturyLink.

13. In our negotiations with these customers we often receive very specific feedback, such as "your competitors are not charging NRCs," or "another company will give us that service for $200 less per month." Some larger customers deliberately seek a diversity of suppliers just for that reason: to use the customer's buying power to play carriers off each other to get more favorable rates, terms and conditions. In one recent situation, a customer issued an RFP and received bids for thousands of locations from numerous providers. The customer then compiled a spreadsheet reflecting the lowest bid in each geographic area. The customer shared the spreadsheet with each competing bidder, offering the customer's business if the bidder could beat that lowest price.

14. These customers also know what they want. In their RFPs or request for service, they specify clear demands and are willing to engage in extended negotiations, with multiple providers if necessary, to meet their particular business needs.

III. Dominant Carrier Regulation Prevents Customers from Receiving Simple, Customized Product Solutions and Undermines Competition

A. Impact on Customers

15. Dominant carrier regulation of certain CenturyLink enterprise broadband services has a significant negative impact both on customers and competition. While customers seek simple, customized product offerings, dominant carrier tariffing requirements result in "one size fits all" offerings that are particularly ill-suited for responding to and negotiating multiple location RFP responses. As noted, purchasers of these services tend to have varied, individual needs and preferences, while a tariff typically has a single standard set of rates, terms and conditions that cannot easily be modified given the cumbersome tariffing process. The standardized offerings required by tariffing rules also pale in comparison to the flexible arrangements that customers can obtain from CenturyLink's nondominant competitors and therefore, place CenturyLink at a competitive disadvantage. This particularly is a concern for services where new construction is required. If permitted to do so, CenturyLink negotiates the length of the contract based on the financial metrics of the case, including capital required to build new fiber facilities. Such case-specific considerations cannot easily be captured in a general tariff offering.

16. As noted, national purchasers of enterprise broadband services frequently seek uniform rates, terms and conditions. For example, many wholesale customers prefer uniform rates because they are less administratively burdensome and allow them to easily determine the cost of providing service in a particular area. If the customer is unsure where its demand is likely to grow, varied pricing makes it much more difficult for the

customer to develop its business case. Customers' preference for uniform rates directly conflicts with the disparate regulation that currently applies to CenturyLink's ILEC affiliates, and frequently requires the customer to purchase via tariff from CenturyTel and Embarq and by commercial agreement from QC, potentially with different rates, terms and conditions in all three.

17. If a customer seeks a uniform rate, sometimes the best we can do is offer a "composite" rate, whereby the customer would pay the tariffed rate for the service where required and a lower rate in other areas, such that, on average, the customer will pay the negotiated "composite" rate for the service. While this approach may give the customer its desired uniform rate, it adds unnecessary complexity and is far from the simple, transparent arrangement that all customers seek and CenturyLink's nondominant competitors are able to provide.

18. While some customers have agreed to this framework, others have rejected it as too complicated. If a customer receives five responses to its RFP and one of those five is much more complicated than the others, the customer may not even make the effort to assess how the more complicated proposal compares to the others. These arrangements are also administratively burdensome for CenturyLink, sometimes requiring manual billing, ordering and/or provisioning.

19. In 2010, for example, legacy CenturyLink lost a bid to provide Ethernet services in a number of metropolitan areas in response to an RFP issued by a national carrier. Following this loss, CenturyLink solicited feedback from the carrier regarding the reason it awarded the project to another provider. Among other things, the carrier complained

about the lack of uniformity in CenturyLink's rates, the complex and confusing rate structure used to mimic uniform pricing and the general difficulty of doing business with CenturyLink relative to its peers. Thus, dominant carrier regulation ultimately undermines CenturyLink's ability to compete.

20. For the largest customers, we can typically find a solution – though complicated – to meet the customer's needs. That is particularly the case if the customer's request includes areas served by QC, which generally can offer enterprise broadband services via commercial agreement. For smaller customers that often is not the case, especially if its request is limited to areas where CenturyLink has no pricing flexibility.

21. In theory, CenturyLink can modify or add tariff provisions to adapt to customer specific requirements. CenturyLink has used this approach on occasion. However, this approach falls short for two reasons.

22. *First*, modifying or adding to a tariff requires significant work and time, including the following steps:

    (1) Preparation of revised and/or new tariff pages. If the new offering differs significantly from the existing tariffed offering, it may be necessary to create or revise as many as 200 tariff pages.

    (2) Creation of "checksheets" listing the new and revised tariff pages and their revision number.

    (3) Preparation of "description and justification" material detailing the nature of the tariff filing.

    (4) Development of cost support/rate support worksheets that detail the cost associated with each element of the service offering and demonstrate that the proposed rate exceeds the applicable cost floor. This exhibit sometimes exceeds 500 pages.

    (5) For a new service, preparation of a demand exhibit showing two years of forecasted demand by rate element.

(6) For a restructured service, preparation of a Tariff Review Plan.

(7) Inclusion of a transmittal cover letter and Tariff Review Plan certification, signed by a corporate officer.

In practice, these steps can take two to three months from start to finish. In one recent example, a wholesale customer insisted on a network architecture that would ensure redundancy and network diversity in a manner not reflected in CenturyLink's tariff. In order to accommodate this request, CenturyLink revised its tariff, which took several months to complete. Few customers are willing to wait that long to begin taking service.

23. It is also virtually impossible to match a competitor's promotional offering given the time it takes to implement tariff revisions. It is not uncommon for a customer to note in our negotiations that one of our competitors has offered a more favorable term than we are offering them. If this occurs in an area where CenturyLink is still subject to tariff regulations, CenturyLink has no way to respond to that development without modifying its tariff, which generally cannot be done quickly enough. Modifying a tariff is also a resource-intensive process that frequently is not justified for a single customer.

24. *Second*, it is difficult to develop a tariffed offering that appropriately limits the availability of that offering to similarly situated customers. In another recent situation, a wholesale customer sought a price below CenturyTel's tariffed rate. Because CenturyTel lacks any pricing flexibility, it was unable to meet the customer's request without lowering the rate for all customers by modifying the tariff. While Embarq possesses pricing flexibility in some areas, that flexibility is limited to certain geographic areas and

therefore incompatible with the national or regional arrangements sought by many enterprise broadband customers.

B. Impact on Competition

25. Dominant carrier regulation also undermines competition, by requiring CenturyLink to broadcast its prices. Through the tariff process, competitors receive advance notice of CenturyLink's new tariff offerings and can respond by undercutting the new offerings even before the tariff becomes effective. In general, competitors typically peg their "list" prices at a certain amount, such as 10%, below CenturyLink's tariffed rate. This is in sharp contrast to areas where CenturyLink has forbearance and pricing, both by CenturyLink and competing providers of enterprise broadband services, tends to by more dynamic and customer specific.

IV. Benefits of Proposed Forbearance

26. Over the past four years, CenturyLink has used its existing forbearance from dominant carrier regulation to benefit purchasers of its enterprise broadband services. During that time, CenturyLink has entered into approximately 270 commercial agreements during that time. Because these agreements are individually negotiated, they have been tailored to a particular customer's specifications. Aside from differing rates and pricing structures, some of these agreements have included different term lengths, service level agreements and product configurations than those that had been in CenturyLink's tariffs.
27. Forbearance has also resulted in lower prices for enterprise broadband services, by eliminating the pricing umbrella of tariffed prices and giving CenturyLink the flexibility to meet competitors' promotional offerings. These price reductions are reflected in a