

**Attachment D**

**Resubmitted March 21, 2012**

**REDACTED – FOR PUBLIC INSPECTION**

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**DECLARATION OF EMILY BINDER**

**I. Introduction**

1. My name is Emily Binder. My business address is 5454 West 110<sup>th</sup> 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.<sup>1</sup> 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

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<sup>1</sup> 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 CONFIDENTIAL]** ■ **[END 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)<sup>2</sup> 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

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<sup>2</sup> 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 be 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

reduction in the average rate paid for CenturyLink enterprise broadband services that were detariffed in 2007 and 2008. On average, the average rate for CenturyLink services covered by the *Enterprise Broadband Forbearance Orders* have declined by [BEGIN CONFIDENTIAL] ■ [END CONFIDENTIAL] percent since they were detariffed. The prices for some individual services have dropped even further. For example, the average price paid for Embarq's Ethernet-based EPL service has declined by [BEGIN CONFIDENTIAL] ■ [END CONFIDENTIAL] percent since 2007.

28. The requested forbearance will further benefit customers. With its enterprise broadband services uniformly regulated as nondominant services, CenturyLink will be able to develop company-wide offerings at uniform rates, terms and conditions, as demanded by customers. CenturyLink also will be more aggressive in attempting to match and beat competitors' promotional offerings on a transaction-by-transaction basis—resulting in lower prices and more satisfied customers.

/s/ Emily Binder  
Emily Binder

February 23, 2012