

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of	)	CUID No:	PSID No:
Cox Communications Omaha, LLC	)	NE0064 (Bellevue)	008575
and	)	NE0065 (La Vista)	
CoxCom, LLC	)	NE0110 (Offutt AFB)	
	)	NE0111 (Omaha)	
	)	NE0155 (Omaha)	
	)	NE0239 (Omaha)	
	)	NE0512 (Gretna)	
Petition for Determination of Effective Competition	)	NE0531 (Valley)	
	)	NE0530 (Waterloo)	
	)	IA0092 (Council Bluffs)	
	)	IA0214 (Carter Lake)	
	)	ID0083 (Bellevue)	003758

To: The Secretary's Office
Attn: The Media Bureau

PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION

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September 18, 2013

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SUMMARY

Competition among the various multichannel video programming distributors (“MVPDs”) operating in the Nebraska, Iowa, and Idaho communities served by Cox’s cable television systems (collectively, the “Communities”) more than satisfies the effective competition standards Congress established in Section 623(l)(1) of the Communications Act (the “Act”). In addition to Cox, a variety of other formidable multichannel video competitors offer and provide service throughout the Communities. These competitors include local exchange carrier affiliate Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink”) and nationwide direct broadcast satellite (“DBS”) operators such as DirecTV and Dish Network (the nation’s second and third largest MVPDs). This competitive environment provides consumers with multiple options for providers of multichannel video and other communications services and ensures high standards of customer service and competitive rates. Given these circumstances, the fact that all the Communities are subject to effective competition is unsurprising. The Bureau previously has held that ten other Cox franchise areas adjacent to or nearby the Communities are subject to effective competition, and this case is no different.

Cox is subject to effective competition from CenturyLink under the “LEC” test set forth in Section 623(l)(1)(D) of the Act and corresponding Section 76.905(b)(4) of the Commission rules in the cities of Omaha and Bellevue, Nebraska (the “LEC Communities”). CenturyLink is a franchised cable operator that offers comparable programming directly to subscribers in a substantial and expanding portion of Cox’s service areas in the LEC Communities. CenturyLink also will soon be expanding its video service to the adjacent communities of Gretna, La Vista, and Ralston pursuant to cable television franchises it recently acquired in those Communities. Moreover, CenturyLink’s extensive marketing efforts in a variety of media, almost twenty years of video service in the City of Omaha, media coverage of recent franchises granted to CenturyLink by Omaha, Bellevue, Gretna, LaVista, and Ralston, Nebraska, and CenturyLink’s strong corporate presence have resulted in broad customer awareness of its competitive video service throughout the region.

Cox also is subject to effective competition from DBS providers in all ten Communities under the “Competing Provider” test set forth in Section 623(l)(1)(B) of the Act and corresponding Section 76.905(b)(2) of the Commission’s rules. In all the Communities, two or more unaffiliated MVPDs offer comparable programming to fifty percent or more of occupied households and Cox competitors collectively serve more than fifteen percent of them. Cox currently is subject to effective competition under both the LEC and Competing Provider tests in Omaha and Bellevue, Nebraska, but will soon also be subject to both LEC and Competing Provider effective competition in Gretna, La Vista, and Ralston, Nebraska.

Given these facts, the existence of effective competition in all the Communities is undeniable. The Bureau should therefore grant this Petition forthwith.

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PETITION FOR DETERMINATION OF EFFECTIVE COMPETITION

Cox Communications Omaha, LLC and CoxCom, LLC (collectively, "**Cox**"), by its attorneys and pursuant to Sections 76.7 and 76.907 of the rules of the Federal Communications Commission (the "**Commission**"), 47 C.F.R. §§ 76.7, 76.907, hereby petitions the Media Bureau for a determination of effective competition in the above-captioned Nebraska, Iowa, and Idaho communities (collectively, the "**Communities**").¹

BACKGROUND

The Communications Act (the "**Act**") and the Commission's rules provide that cable television rates may be regulated only in the absence of effective competition.² The

¹ Cox is submitting application fees pursuant to 1.1104(8)(g) of the Commission's rules for each physical system ("**PSID**") included in this Petition.

² 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905(a).

Commission, however, presumes that cable systems do not face such competition absent a demonstration to the contrary.³ When a cable operator rebuts this presumption with evidence that effective competition is present within a franchise area, rates and other aspects of the operator's business in the affected area no longer are subject to regulation.⁴

Cox's franchise areas in the Communities are served by an abundance of multichannel video programming distributors ("MVPDs") in addition to Cox, including but not limited to Local Exchange Carrier ("LEC") affiliate Qwest Broadband Services, Inc. d/b/a CenturyLink ("CenturyLink") as well as Direct Broadcast Satellite ("DBS") providers such as DirecTV and Dish Network. This competitive environment ensures that customers in Cox's service areas have available a variety of multichannel video program offerings at competitive prices. It also ensures high standards of customer service.

Cox is subject to effective competition under Section 623(l)(1)(D) of the Act⁵ and corresponding Section 76.905(b)(4) of the Commission's rules⁶ (a/k/a the LEC test) in Omaha and Bellevue, Nebraska (the "LEC Communities"). As demonstrated below, CenturyLink is a LEC affiliate that is a well-established franchised cable operator unaffiliated with Cox, and that

³ 47 C.F.R. § 76.906.

⁴ See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, *Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631 at paras. 39-49 (1993) ("Rate Order"); *First Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking*, 9 FCC Rcd 1164 at para. 26 (1994); *Third Order on Reconsideration*, 9 FCC Rcd 4316 at para. 7 (1994). See also 47 C.F.R. § 76.905(a); 47 U.S.C. § 533(a)(3) (MMDS and SMATV cross-ownership restrictions are inapplicable where effective competition is present); *Time Warner Entertainment Co. v. FCC*, 56 F.3d 151, 187-92 (D.C. Cir. 1995) (tier buy-through and uniform rate requirements are inapplicable where effective competition is present); Implementation of the Cable Television Consumer Protection and Competition Act of 1992, *Memorandum Opinion and Order*, 11 FCC Rcd 20206 (1996); Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues, *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 2598 at para.102 (2001) (cable operator subject to effective competition may place broadcast signals on upper service tiers).

⁵ 47 U.S.C. § 543(l)(1)(D).

⁶ 47 C.F.R. § 76.905(b)(4).

offers comparable programming directly to subscribers in substantial and growing portions of Cox's service areas in the LEC Communities.⁷

Cox also is subject to effective competition under Section 623(l)(1)(B) of the Act⁸ and corresponding Section 76.905(b)(2) of the Commission's rules⁹ (a/k/a the Competing Provider test) in all ten Communities included in this Petition. As demonstrated below, in each of the Communities, two or more unaffiliated MVPDs offer comparable programming to more than fifty percent (50%) of occupied households, and competitors other than Cox collectively serve more than fifteen percent (15%) of them. Cox is subject to effective competition under both the LEC and Competing Provider tests in Omaha and Bellevue, Nebraska (and soon will be subject to LEC effective competition in Gretna, La Vista, and Ralston, Nebraska, where CenturyLink now holds cable television franchises). The Bureau also has recognized that DBS operators and other competitive MVPDs provide effective competition to ten other nearby franchise areas Cox serves in its Omaha and Sun Valley systems.¹⁰

The Bureau should grant this Petition forthwith because Cox is subject to effective competition under one or more of the statutory tests in all the Communities.

DISCUSSION

I. Cox Is Subject To LEC Effective Competition From CenturyLink In Omaha And Bellevue, Nebraska.

In the City of Omaha and Bellevue, Nebraska, Cox is subject to effective competition pursuant to Section 623(l)(1)(D) of the Communications Act¹¹ and corresponding Section 76.905(b)(4) of the Commission's rules¹² because CenturyLink is a LEC affiliate and a

⁷ CenturyLink (and its predecessor, US West Communications, Inc.) has been a franchised cable operator in the City of Omaha since 1996. *See* City of Omaha Ordinance No. 33917 (approved July 2, 1996).

⁸ 47 U.S.C. § 543(l)(1)(B).

⁹ 47 C.F.R. § 76.905(b)(2).

¹⁰ *See CoxCom, Inc. d/b/a Cox Communications Omaha and Cox Communications Sun Valley*, 25 FCC Rcd 1484 (Med. Bur. 2010).

¹¹ 47 U.S.C. § 543(l)(1)(D).

¹² 47 C.F.R. § 76.905(b)(4).

franchised cable operator that provides comparable programming in franchise areas that substantially overlap (and in fact are contiguous with) Cox's franchise areas.

Under Section 623(l)(1)(D) of the Act and corresponding Section 76.905(b)(4) of the Commission's rules, a cable operator is subject to effective competition whenever:

a local exchange carrier or its affiliate (or any multichannel video programming distributor using the facilities of such carrier or its affiliate) offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, but only if the video programming services so offered in that area are comparable to the video programming services provided by the unaffiliated cable operator in that area.¹³

To be entitled to a determination of LEC effective competition, therefore, a cable operator need only show that: (1) a LEC or LEC affiliate (or any MVPD using their facilities) (2) "offers" video programming services directly to subscribers in an unaffiliated cable operator's franchise area (3) that are "comparable" to the cable operator's service.¹⁴

Unlike the Competing Provider test, which expressly requires a minimum fifty percent (50%) coverage and fifteen percent (15%) penetration showing, the LEC test does not require that the LEC have built out its network to a specific coverage area, have a certain number of subscribers, or serve a particular percentage of the households in a franchise area.¹⁵ Rather, the Commission has expressly recognized that the LEC test requires deregulation as soon as the LEC has established a "competitive presence," which can occur even "before the LEC finishes installing its plant or rolling out its service."¹⁶

¹³ 47 U.S.C. § 543(l)(1)(D); see 47 C.F.R. § 76.905(b)(4).

¹⁴ Implementation of the Cable Act Reform Provisions of the Telecommunications Act of 1996, *Report and Order*, 14 FCC Rcd 5296, 5300-13 at paras. 7-30 (1999) ("*Cable Act Reform Order*"), *reconsideration denied*, 17 FCC Rcd 7609 (2002).

¹⁵ See *Cable Act Reform Order*, 14 FCC Rcd at 5302, para. 10 ("Because the definition of 'offer' does not include any requirement that customers actually purchase the service, only that the service be available, we reject arguments that we should adopt penetration standards."); *id.* at 5303-04, para. 11 (noting that "Senator Hollings explained that 'the bill changes the definition of 'effective competition' in the 1992 Act to allow cable rates to be deregulated as soon as a telephone company begins to offer competing cable service in a franchise area.'").

¹⁶ See *Cable Act Reform Order*, 14 FCC Rcd at 5303, para. 11.

A. CenturyLink Is A LEC Affiliate.

The first element of the LEC test requires that video programming services be provided by a local exchange carrier, its affiliate, or any MVPD using their facilities. The Act defines the term “local exchange carrier” as “any person that is engaged in the provision of telephone exchange service or exchange access.”¹⁷

CenturyLink is a LEC affiliate because it is a wholly-owned subsidiary of CenturyLink, Inc., which is the nation’s third-largest telecommunications company. CenturyLink, Inc. also provides local exchange service in Nebraska through another wholly-owned subsidiary, CenturyLink QC, formerly known as Qwest Corporation (“Qwest”).¹⁸ CenturyLink, Inc. recently completed its acquisition of the incumbent Bell Operating Company serving the Communities (*i.e.*, Qwest) as well as Qwest Broadband Services, Inc. (“Qwest Broadband”), Qwest’s wholly owned cable subsidiary.¹⁹ Under the LEC test, CenturyLink is a LEC-affiliated competitive MVPD because CenturyLink, Inc. owns attributable interests in both CenturyLink and Qwest.²⁰ In this case, the ultimate parent of both CenturyLink and Qwest is CenturyLink, Inc., which wholly owns both companies.²¹ The Commission also has specifically held that Qwest Broadband Services, Inc. (*i.e.*, CenturyLink), “qualifies as a LEC for purposes of the LEC

¹⁷ 47 U.S.C. § 153(26).

¹⁸ See CenturyLink, Inc., *List of Subsidiaries*, www.centurylink.com/static/PDF/AboutUs/DoingBusiness/Affiliates_List_021312.pdf (“**CenturyLink Subsidiary List**”), attached hereto as Exhibit 1.

¹⁹ See CenturyLink, *Qwest is Becoming CenturyLink*, <http://www.centurylinkqwestmerger.com/downloads/news/CTL-Q%20Merger%20Close%20Release%20FINAL.pdf> (last visited Sept. 13, 2013). As of the end of 2011, CenturyLink, Inc.’s Nebraska subsidiary had total telecommunications plant in service throughout its Nebraska service area valued at more than \$1,724,627,000, and served approximately 215,000 billable access lines there (more than forty-five percent (45.35%) of the incumbent LEC lines in Nebraska). See http://www.centurylink.com/static/Pages/AboutUs/FieldNews/Documents/Nebraska_SFS_2012.pdf (last visited Sept. 13, 2013); *Compare id.* (reporting that CenturyLink served 215,000 billable access lines in Nebraska) with *Local Telephone Competition*, Federal Communications Commission at Table 14 (January 2013) (reporting that incumbent LECs served 474,000 access lines in Nebraska as of December 2011). The FCC’s *Local Telephone Competition Report*, reflecting data as of December 2012, is not yet available.

²⁰ See 47 C.F.R. §§76.905(b)(4), 76.905(i).

²¹ See Exhibit 1, CenturyLink Subsidiary List at 1 (listing CenturyLink as a wholly-owned subsidiary) and at 7 (listing Qwest as a wholly-owned subsidiary).

effective competition test.”²² These facts conclusively establish that CenturyLink (*i.e.*, Qwest Broadband Services, Inc. d/b/a CenturyLink) is a LEC affiliate.

B. CenturyLink Offers Multichannel Video Service In Substantial Portions Of Cox Service Areas In The LEC Communities.

The second part of the LEC test requires that the LEC competitor “offer” video programming service in an unaffiliated cable operator’s franchise area.²³ This requirement is satisfied here because: (1) Cox is not affiliated with CenturyLink; (2) CenturyLink is physically, legally, and technically able to deliver service to a substantial and rapidly expanding portion of the LEC Communities; and (3) potential subscribers throughout the LEC Communities and beyond are broadly aware of CenturyLink’s growing competitive cable television service.

In promulgating rules under the “offers service” prong of the LEC test, the Commission concluded that “to support a finding of effective competition under the LEC test, the LEC’s service must substantially overlap the incumbent cable operator’s service in the franchise area.”²⁴ The Commission observed that the definition of “offer” includes no requirement that consumers actually purchase the competitor’s service and affirmed the former Cable Services Bureau’s finding that “a LEC’s presence can have a competitive impact on a cable operator before the LEC finishes installing its plant or rolling out its service.”²⁵ It specifically stated that the Commission would “continue applying the LEC test in this way when the likelihood of impending competition throughout a substantial part of the incumbent cable operator’s service area is established, the competitive service is commercially available, and potential subscribers

²² *CoxCom, Inc. d/b/a Cox Communications Phoenix*, 17 FCC Rcd 17188, at para. 4 (Med. Bur. 2002).

²³ See 47 C.F.R. § 76.905(e). Video services are “offered” under the Commission’s rules when the distributor is physically able to deliver service to potential subscribers with little or no additional investment by the distributor, when no regulatory, technical or other impediments to households taking service exist, and when consumers are reasonably aware that they may purchase the MVPD’s services. *Id.*

²⁴ *Cable Act Reform Order*, 14 FCC Rcd at 5302, para. 10 (footnote omitted).

²⁵ *Id.* at paras. 10-11 (footnote omitted, citing *Time Warner Entertainment-Advance/Newhouse Partnership*, 12 FCC Rcd 3143 (Cab. Serv. Bur. 1997)); see also *Comcast Cablevision of the South*, 13 FCC Rcd 1676 (Cab. Serv. Bur. 1997).

in the franchise area served by the incumbent are reasonably aware that the service is either actually available to them or will be available within a reasonable time.”²⁶ The Commission also determined that “[i]f the LEC is franchised, a showing of the coverage and construction obligations in the franchise should be sufficient” to establish the LEC’s intention and ability to complete the installation of its video service and compete in a substantial portion of the franchise area.²⁷

In this case, CenturyLink’s Prism TV cable television service in the LEC Communities satisfies each aspect of the Commission’s LEC effective competition standards.²⁸

1) CenturyLink Faces No Legal Or Technical Impediments To Its Video Services, Which More Than Substantially Overlap Cox’s Service In The LEC Communities.

Potential customers to CenturyLink’s service in the LEC Communities face no legal or technical impediments to purchasing CenturyLink’s video service. CenturyLink has both the legal authority and technical ability to provide video service to customers in Omaha and Bellevue because it is authorized to provide multichannel video service throughout each of those Communities pursuant to local franchise agreements and because CenturyLink actually provides such service in both its Omaha and Bellevue franchise areas.²⁹

As noted above, the City of Omaha first issued a cable franchise to CenturyLink’s predecessor in June 1996. CenturyLink’s 1996 franchise authorized service in the western portion of the city³⁰ and was amended in 2012 to authorize service throughout the city, among

²⁶ *Cable Act Reform Order*, 14 FCC Rcd at 5303, para. 11 (footnote omitted).

²⁷ *Id.* at 5305, paras. 13-14; *see also Mediacom Minnesota LLC*, 21 FCC Rcd 204, 205, para. 3 (Med. Bur. 2006) (“[a]n incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide services that substantially overlap the incumbent operator’s service in the franchise area.”) (footnote omitted).

²⁸ Prism TV is CenturyLink’s state-of-the-art, all-digital multichannel video service, which offers more than two hundred local, premium, and high-definition channels directly to subscribers using primarily fiber-optic facilities.

²⁹ Relevant excerpts from CenturyLink’s franchises are attached hereto as Exhibit 2.

³⁰ *See* City of Omaha Ordinance 33917 (granting franchise to US West Communications, Inc.).

other things.³¹ The 2012 CenturyLink Omaha Franchise requires that CenturyLink offer service to twenty-five percent of the city's households within three years (*i.e.*, by 2015).³² As the city attorney observed, "[t]his will require [CenturyLink] to almost double its current coverage," and, subject to penetration benchmarks, "[m]andatory build-out continues on [a] 2-year schedule... until the Company has a cable system throughout the city."³³ Therefore, CenturyLink's franchise area in Omaha more than substantially overlaps Cox's franchise: the franchise areas are coterminous.³⁴

CenturyLink's Bellevue Franchise is nearly identical to its Omaha Franchise.³⁵ CenturyLink's Bellevue Franchise authorizes cable service "within the jurisdictional boundaries of the City" (including any annexed areas), requires CenturyLink to offer cable service to twenty-five percent of the city's households within three years, and contains a mandatory build-out schedule, subject to penetration benchmarks, in fifteen percent increments "every two (2) years until Company is capable of offering Cable Services to all Living Units in the City."³⁶ Therefore, just as with its Omaha Franchise, CenturyLink's franchise area in Bellevue more than substantially overlaps Cox's franchise area; the franchise areas are coterminous.³⁷

CenturyLink also faces no technical impediments to offering its video services in Omaha and Bellevue. In fact, CenturyLink and its predecessors have provided cable television services to Omaha residents for more than seventeen years. As of May 31, 2013, CenturyLink served

³¹ See Ordinance No. 39519 (granting franchise to Qwest Broadband Services, Inc. d/b/a CenturyLink (dated December 5, 2102), at § I.4(a) ("**CenturyLink Omaha Franchise**"). See CenturyLink Omaha Franchise Excerpts, Exhibit 2.

³² CenturyLink Omaha Franchise at § I.4(a).

³³ City of Omaha City Attorney Ordinance Transmittal Memorandum, attached hereto as Exhibit 3.

³⁴ Cox's agreements with the LEC Communities, like those of CenturyLink, authorize service throughout each community.

³⁵ The City of Bellevue is adjacent to Omaha's southeastern border.

³⁶ CenturyLink Bellevue Franchise, § I.4(a); See Exhibit 2.

³⁷ Cox observes that Section 621(a)(4) of the Communications Act, 47 U.S.C. § 541(a)(4), requires that CenturyLink be allowed a "reasonable period of time to become capable of providing cable service to all households in the franchise area."

5,136 active video subscribers in Omaha;³⁸ CenturyLink quickly began upgrading its plant to provide Prism TV service outside of its 1996 franchise area after the city granted its 2012 franchise.³⁹ In Bellevue, CenturyLink was providing its Prism TV service to customers only about two months after obtaining its franchise.⁴⁰ This confirms that CenturyLink's video service faces no technical impediments in the LEC Communities. Moreover, as demonstrated below, CenturyLink also unquestionably possesses the intent and ability to rapidly upgrade and expand its video service, not only in Omaha and Bellevue, but also in Gretna, La Vista, and Ralston, Nebraska, where CenturyLink recently obtained cable franchises.⁴¹

2) CenturyLink Has Demonstrated Its Intent And Ability To Rapidly Expand Its Video Service In The LEC Communities.

CenturyLink is deploying its MVPD service rapidly throughout the LEC Communities and beyond, and its technical ability to do so is unquestionable. CenturyLink already provides video service to substantial portions of Omaha, and is upgrading its pre-existing network to continue expanding its video service throughout Omaha, Bellevue, and the other communities where CenturyLink recently obtained cable franchises. CenturyLink demonstrated its intent and ability to rapidly deploy video service in Bellevue, where it began providing its Prism TV service directly to subscribers within only approximately sixty days after obtaining a local franchise.⁴² CenturyLink therefore can deploy, and is in fact deploying, video services much faster than traditional facilities-based competitors.

³⁸ See CenturyLink Report to the City of Omaha Cable Television Access Corporation, dated July 3, 2013 ("CTAC Report"), attached hereto as Exhibit 4.

³⁹ See examples of CenturyLink upgrade notices, attached hereto as Exhibit 5.

⁴⁰ CenturyLink received approval of its franchise from the City of Bellevue, Nebraska on May 13, 2013; See CenturyLink Bellevue Franchise, included in Exhibit 2, attached hereto. As of July 19, 2013, CenturyLink was receiving and processing residential service orders; See Customer Order Confirmations, attached hereto as Exhibit 6.

⁴¹ CenturyLink's Gretna, La Vista, and Ralston franchises are substantially similar its Omaha and Bellevue franchises. See <http://www.gretnane.org/Portals/0/CC%20Packet%206-4-13.pdf> (at pg. 28) (last visited Sept. 17, 2013), <http://ci.la-vista.ne.us/Archive.aspx?AMID=&Type=&ADID=1678> (last visited Sept. 17, 2013), and http://cityofralston.com/city_council/minutes/council20130507.pdf (last visited Sept. 17, 2013).

⁴² See n.40, *supra*.

CenturyLink also has demonstrated its intent and ability to continue aggressively deploying its all-digital Prism TV service in the LEC Communities, in the Omaha metropolitan area generally, and throughout the nation. In fact, CenturyLink's Prism TV deployment has been a top company priority nationwide. In May 2011, CenturyLink's Chief Executive Officer Glen Post announced plans to offer Prism TV to one million homes nationwide by the end of 2011, a goal it quickly met.⁴³ And, Prism TV continues to rapidly add subscribers. While other cable MVPDs are losing customers and market share,⁴⁴ CenturyLink announced that its Prism TV subscriber base grew by 12.5% over the first quarter of 2013.⁴⁵ CenturyLink's continuing deployment effort is fueled by the company's announced investment of up to \$250 million per year between 2012 and 2015 to enable further expansion of Prism TV.⁴⁶

Moreover, a key element of CenturyLink's competitive approach in the LEC Communities, and in the Omaha metropolitan area generally, is the provision of advanced video and broadband products. Following its merger with Qwest, CenturyLink announced that it would "leverage everything we have as a combined, new company to come back and win the [Omaha] market."⁴⁷ CenturyLink is carrying through on this commitment by upgrading and expanding its video offering in Omaha to Prism TV, by offering Prism TV in Bellevue, and by preparing to offer it in Gretna, La Vista, and Ralston (where CenturyLink recently obtained cable

⁴³ Andy Vuong, *CenturyLink Weighs More Expansion of Prism TV Service*, THE DENVER POST (May 6, 2011), included in Exhibit 7; see also CenturyLink, Inc., *Third Quarter 2011 Earnings Conference Call Presentation* at 11 (Nov. 2, 2011) ("*CenturyLink 3Q11 Earnings Presentation*"), available at <http://news.centurylink.com/index.php?s=43&item=2873&printable>.

⁴⁴ See Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, *Fifteenth Annual Report*, 28 FCC Rcd 10496 at para. 129 (2013) ("*Fifteenth Annual Report*").

⁴⁵ CenturyLink, Inc., *First Quarter 2013 Earnings Call Transcript* (May 8, 2013) ("*CenturyLink 1Q13 Earnings Transcript*"), available at <http://www.morningstar.com/earnings/52222870-centurylink-inc-q1-2013.aspx?pindex=2> (last visited Sept. 16, 2013).

⁴⁶ Zacks Equity Research, *CenturyLink Expands Prism Networks*, (Feb. 25, 2013), available at <http://finance.yahoo.com/news/centurylink-expands-prism-networks-223337609.html>.

⁴⁷ Ross Boettcher, *CenturyLink aims to win market*, OMAHA WORLD-HERALD (Apr. 1, 2011), included in Exhibit 7 attached hereto (Press Coverage regarding CenturyLink's IPTV deployment in the Omaha metropolitan area).

franchises). As noted above, Prism TV is a state-of-the-art, all digital multichannel video service providing over two hundred local, premium, and high definition channels using primarily fiber-optic facilities. Prism TV provides “new functionality and applications, including expansion of [CenturyLink’s] TV Everywhere capabilities . . . video-on-demand library and . . . recent successful trial of wireless set-top boxes.”⁴⁸

In conjunction with its Prism TV upgrade, CenturyLink also announced that it also would be offering Omaha subscribers broadband internet access at speeds of up to one gigabit per second,⁴⁹ and expressed its commitment to continue providing its customers with advanced communications solutions, now and in the future.⁵⁰ The Commission also has recognized CenturyLink’s presence in the Omaha market. In a statement released May 1, 2013, then Chairman Julius Genachowski acknowledged and praised CenturyLink’s deployment of one gigabit service to the Omaha market.⁵¹ CenturyLink, moreover, has a compelling incentive to continue accelerating Prism TV deployment because the company credits it with driving revenue growth and improving its “topline revenue trend.”⁵²

In short, CenturyLink’s intent and ability to rapidly expand its video service in the LEC Communities, and in the Omaha metropolitan area generally, is undeniable.

3) CenturyLink Is Legally Bound To Expand Its Video Service And To Provide Additional Services To Residents in the LEC Communities.

CenturyLink also has undertaken substantial, legally binding commitments to expand its video service in the LEC Communities. Under its Omaha and Bellevue franchise agreements, CenturyLink is required to offer its video service to twenty-five percent (25%) of the households

⁴⁸ See n.45 *supra*, *CenturyLink 1Q13 Earnings Transcript*.

⁴⁹ Sarah Reedy, *CenturyLink Uses Omaha as 1Gig Test Bed*, LIGHT READING (May 3, 2013), included in Exhibit 7.

⁵⁰ Press Release, CenturyLink, Inc., CenturyLink to make Omaha one of the fastest broadband cities in America (May 1, 2013), included in Exhibit 7.

⁵¹ FCC News Release (May 1, 2013) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-320643A1.pdf.

⁵² See n.45 *supra*, *CenturyLink 1Q13 Earnings Transcript*.