**Attachment 3**

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# Level 3 Communications' CEO Presents at Morgan Stanley Technology, Media & Telecom Conference (Transcript)

**Executives**

James Crowe – Chief Executive Officer

Level 3 Communications, Inc. (LVLT) Morgan Stanley Technology, Media & Telecom Conference Call February 26, 2013 7:25 PM ET

**Unidentified Analyst**

Okay. Good afternoon everybody. It is my great pleasure to welcome Jim Crowe, CEO of Level 3. I'm going to ask Jim to make some opening remarks. Before that please note that all important disclosures, including personal holding disclosures and Morgan Stanley disclosures, appear at the Morgan Stanley public website, www.morganstanley.com/researchdisclosures or at the registration desk.

Jim, over to you.

**James Crowe**

Well, good afternoon. I'm going to take just a minute or two and provide some context, and I will start with an assertion. Our business has become a whole lot easier to understand over the last couple or three years ago – versus a couple or three years ago. Back then, those of you who followed us remembered we had revenues that were going down, revenues that were coming up. We have completed a number of acquisitions, so there was a lot of dust and smoke in the air.

Today what matters is top line growth. Below that level our margins, gross margins, EBITDA margins have been seasoned for several years. They are constant at 80% incremental gross, 60% incremental EBITDA. We have actually outperformed that because of synergies, but that is a good trendline relationship and we are at about 12% of capital.

So you would decide on the top line growth that makes sense, our cash flow production is a mathematical output of that – of that growth rate. So what determines top line growth? A number of core varying headcount. We have about 1000 and they each produce 8000 to 8500, something in that kind of range. So the logical question is why don't we just double our sales force, double our sales.

There are two answers. First, we really like 80% gross margins. We like them financially and strategically. Financial is obvious. Strategically, the more you buy access from companies whose customers you want to take away, the local incumbents, the more difficulty you are going to have. They obviously don't want to co-operate in helping you take their customers and if you are buying a vital feedstock, access, sooner or later you won't be happy with the outcome.

So the conclusion is we have to have enough on-net market to support whatever is our sales force and produce 80% gross margins. That is an effort we started a couple of years ago adding buildings, which is really the way you manage that gross margin. We need to maintain a ratio roughly, where 60% of our revenue is on that with 100% gross margins, 40% off-net, with 50% gross margins, and we wouldn't mind if more and more were on that.

It is a big effort digging up the streets of San Francisco or New York or Sao Paulo or London. It takes a lot of careful planning and management, but we have got the process going and we expect to add more and more buildings. The other limiting matter, which we have a lot of experience in and we're getting better and better is the factory. We roughly add 10,000 orders each month, or turn them out. Each order has roughly 40 process steps. That is 400,000 process

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steps each month.

It is a big workflow management process. It is where we have spent a great deal of our time, our energy, our chief operating officer, Jeff Storey, his passion is process. We have shown remarkable improvement over the last two, three years. Of course we merge with Global, whenever you merge two fairly equal size companies there is going to be some surprises, good and bad, fluctuations quarter-to-quarter, but our ability to predictably meet our customers promises – the promises we make to customers is central to how many sales people we have.

We sell it and can't turn it up, predictably that does no one any good. So maintaining 80% gross margins, predictably turning up service at huge volume that is what we are focused on. We have plenty of addressable market, plenty of customers, who want to buy from us, 64% of our revenues in the last quarter were enterprise. That grew 8% in constant currency. We want to see that continue, and we feel very good about watching the progression towards our goal, which is to grow 2% sequentially.

We say that to keep everybody co-ordinated, adding addressable market and in the factory when we hit 2% we will set some other goal. So that is where we are at.

**Unidentified Analyst**

Great. Okay, well, let us start with then Global Crossing, you are well into the integration now. You achieved a lot of synergies during 2012. What is left to do there and how do you think in particular, I guess going beyond the cost and Capex synergies, but cross selling the various networks and products.

**James Crowe**

We have got a common product catalogue that is a set of services. We are operating as one company globally. Processes and systems are largely integrated. We still have some work to do. For instance in Latin America, we're not on the same ERP system we are in the rest of the world. That is all planned out. So I would say organizationally in process and system and in product we're initially integrated.

There is lot of opportunity to improve that integration. The product catalogue still can be simplified. We have more products with more descriptors than we eventually want. That simplification will improve our process throughput. We have a lot of effort going around on process simplification. We took out several hundred individual applications last year. We have more to go that is eliminating redundant applications and processes.

Financially, where we [said], maybe a bit ahead. We are comfortable that we achieved the 300 million of synergy and 40 million of Capex savings. And we believe and hope we can do better than the projected 45% of the 300 that comes from network expense. Historically we found lots of opportunities to groom circuits for several years after we have finished, meaning we have 400 access suppliers, and we buy 2.5 billion of access globally. And we think there is a long-term opportunity to improve that.

We have seen a lot of that prior to the global transaction where we had higher margins in the ones I described to you mostly because we took a lot of expense out of the network. We also hoped, but did not announce that we would see a significant improvement in our credit quality and that is a greatly lowered cost of debt. That has been the case as you are well aware.

Our cost of borrowing today is several hundred basis points below what the blended average of Global and Level 3 was. As debt comes up and we have opportunity just to refinance, I think we can see 100 million to 200 million, some of that is already in place, but we said 100 million to 200 million of additional cash flow from interest savings.

**Unidentified Analyst**

So you talked about your goal of 2% sequential CNS growth, I think your guidance was in Q1 we will see some headwinds, you have obviously got a little bit of UK government coming out and so forth. But talk us through 2013, and how you see that accelerating through the balance of the year and how close are we to actually seeing that 2% on a consistent basis?

**James Crowe**

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So, a bit of history. In 2010, we were wrapping up the process improvements and the operational improvements that were necessary from all of the integration and some acquisitions we made in '06 and then integrated in '07. In '10, we said we were confident that we would see growth accelerate and move into the 2% range. That is exactly what happened in 2011, we went from 1% plus to 2.6% through the course of the year in constant currency basis.

So we have done it before. We now need to do it at a bigger scale. Directly to your question, as I said we don't lack for addressable market. The key is enough on-net to get the margin production, and making sure that the work flow enables us to meet our promises to our customers about dates, when we offer them service, or when we turn their service up.

Last year we saw a steady progression to 1.8% in constant currency terms in the fourth quarter. As you said, we have announced that finally a number of contracts we said would go away that were quite large, anchored by UK government contracts, we think will finally go away in the first quarter.

Now the good news is we have gotten a lot of cash from those contracts, but they will go away, and it will affect us. In many ways it would have been nice if they had simply disappeared earlier. Our ability to predict that isn't perfect. That is a customer decision. So we think it will affect the first quarter.

We have also said that without exception, look at what happened in 2012, the comparable second-quarter to second, third quarter to third, fourth to fourth, we expect to be better.

**Unidentified Analyst**

So, exiting this year you should be better or close to that 2% number?

**James Crowe**

Yes.

**Unidentified Analyst**

Okay, and then if we take it then, you obviously did a nice job of summarizing your operating leverage that you have, and you still got significant financial leverage, I think in that context your EBITDA guidance of low double-digit seemed quite conservative, and you just put up sort of high teens number for 2012. Obviously, you are investing in some of the sales force. You do have some of these headwinds. So help us think through why we are not necessarily seeing with still some synergies going through not more of that flowing going through to the EBITDA line this year, and...

**James Crowe**

One overarching comment, looking through the quarterly fluctuations we still expect to see very strong top line and EBITDA growth rate. EBITDA if you just rough work the math grows at about twice the rate CNS, core network services, grow. It is just a function of the operating leverage. So 5%, 6% CNS growth, low double-digit EBITDA growth.

The reason that we have projected that kind of EBITDA growth is as we have said – we fell a bit short. For the whole year our revenue was very close to our target, but in the fourth quarter we fell a bit short for a variety of reasons that were explained on our conference call.

That kind of run rate affects the following year, and then the issue in the first quarter. That pretty much explains if you work through the numbers the shortfall in EBITDA. But I want to make it clear if you look over time that top line growth, EBITDA growth, and cash flow growth, I think you are going to – you will see performance that is certainly better than any of the larger wireline businesses, and if you look at our enterprise growth, which is now 64% of our global revenue. That is a 8% growth constant currency last year and we can accelerate that. That is better I think than almost any other comparable you'll find.

**Unidentified Analyst**

Then if I'm right in thinking, your management team, a lot of your senior management team is compensated on – at least in part on EBITDA performance.

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**James Crowe**

All of our management is compensated with the exception of me, and the reason I'm compensated heavily based on stock price performance. And that is just to make sure that we have the – I am the anchor to windward to make sure we don't take actions where we make EBITDA guidance, but don't invest in the future, and the board is obviously focused pretty heavily. I don't worry about it a lot because we have a management team that is pretty much oriented towards long-term.

But we could in any quarter or year, we could make almost any EBITDA, reasonable EBITDA target you want just by cutting back on expenses, roughly 60% or more of our operating expense is about new sales, new marketing, future, and we wouldn't be happy nor would investors be happy if we don't have the right balance between current performance and longer term investment.

**Unidentified Analyst**

So, let us dig under the revenue a little bit further, I think one of the themes we've really heard in the last couple of days is just the – it feels like something that you have been talking about for years, but the sort of data velocity is just continuing to grow at a very rapid pace, whether it is fiber to the tower with all of the LTE deployments that are going on, whether it is Netflix, and everybody watching House of Cards in one weekend, download session, but we're really – that future has sort of arrived. It is here today. What are you seeing on your network in terms of traffic, and how do you think about that over the next couple of years and sort of pricing trends around that?

**James Crowe**

As you understand, when we talk about the network there are layers to the network, and they are interchangeable. You can buy waves, you can buy private lines. You can buy virtual private networks. You can buy IP transit, you can buy CDM, and depending on your size, your scale as a customer, those are fungible to a large extent.

We believe we have a pretty large sample size at each of those layers, certainly we are not the largest company in the industry, but for IP optical services I think we have a bigger share than any of our competitors. And I think third-party estimates would confirm that at the IP layer for instance, most would say we have roughly a quarter, let me put it this way, because there are so many overlapping networks, one out of every four [bits] of global IP traffic traverses our network.

So it is a big sample size. For antitrust authorities it is a hotly competitive business. We have no concentration. Lots of people are in that business. But we do have a big view in the traffic, and roughly our own internal work confirms the excellent work Cisco did in their Visual Networking Index. The future is dominated by broadband individuals. Now I use that word carefully, I don't mean individuals at their home, individuals at the home and individuals at the office. There is a sea change going on where individuals make selections of the devices, bring your own device, by which they conduct business and by which they conduct their personal affairs.

That is just exploding, wireless and broadband to the home. Broadband to the home is growing, according to Cisco, and again we would roughly agree with this at 40%, 45% a year. That is 80% of today's incremental demand.

Wireless broadband is a few percent, but growing at over 100%. Business is yet to accelerate. It is roughly the balance, 16%, 18% growing at 20% a year, and business still hasn't adopted a lot of visual interaction, a lot of supply chain management through visual communications, communications with their customers through visual interaction. That is coming.

So the punch line of all of this is we think for the foreseeable future those who create applications and content will move much more quickly than the rather slow-moving wired and wireless communications providers through which that content and application flows. I think that means pricing for bandwidth in its various forms. Wireless is a great example. It is going to tend to be higher, because you are in a constrained environment. Look at your wireless billing. See what is happening to it.

I think that creates huge opportunities for those in the business, like us who believe the key is not simply to raise unit prices. It is to lower unit prices faster – lower unit cost faster than you lower unit prices. That has been for 10 years our mantra, through scope, scale, innovation, lower unit costs, faster than unit prices grow, then you create a Netflix, or an environment for a Netflix, or an HBO GO, or an MLB.com, or an NFL.com for gaming, which is a huge phenomenon that rarely gets talked about in proportion to its size.

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All of these things are network delivered, cloud-based services. And we feel more strongly than ever that if you could innovate, increase your scope, increase your scale, drop unit costs, it is a price elastic commodity and it is going to respond to lowering prices. We do think it is a mistake for those who I kind of refer to as the [scarce bit] people. There is only so much spectrum, there is only so much bandwidth, we want to raise prices.

I think that is a flawed strategy. The key is to innovate, drop unit costs faster than you drop unit prices, but drop unit prices.

**Unidentified Analyst**

Would you say the pricing environment is fairly rational right now?

**James Crowe**

For 90% of what we sell pricing is plus or minus 10%. The closer you get to the fiber and the closer you get to the Metro and the customer the more you get above zero. So for metro fiber, for infrastructure, data centre services, co-location, up in actual real terms. You get to the centre of the network, it tends to decline, for monthly billed stuff, maybe 10% a year.

For usage-based high speed IP, stabilized high-speed IP, it kind of goes up and down. It depends on whether certain suppliers get frisky or not. It depends on what whether somebody is trying to take temporary share. But that is at the margin.

**Unidentified Analyst**

As part of your guidance, you projected free cash flow generation in 2013, but I think there was some caveats around working capital and around interest rate swaps, so maybe you can just clarify what the expectation should be for?

**James Crowe**

I don't think it was around working capital. It was around that interest rate swap and whether we chose to settle it or not settle it. I want to be careful here. You know, a slight change in payables versus receivables, a particular bill that shows up on December 31 and gets paid versus January 1 can have a fairly big movement.

I think what I would hope in the way we investors would focus on, and what we certainly look at, look at 2012, then'11 and '10, in 2012 we used 165 million of cash. So we had negative free cash flow of 165 million. If you look at our guidance, in 2013 we expect to be above the positive line. That is 165 plus swing. We expect that kind of leverage or more to continue. You have got a pretty good model. You can plug the numbers in, run rate and trend line. You get 3% or 4% top line growth, to generate not to far in the future hundreds of millions of a 3, 4-year period of free cash, if you can get above the 5%, 6% range, you can get up into the 1 billion to 2 billion.

That is a good trend line. And I think you can see it if you look to the kind of one quarter here, one quarter there.

**Unidentified Analyst**

Okay. We got time for some questions from the audience. At the back there.

**Question-and-Answer Session**

**Unidentified Analyst**

Hi Jim. A couple of years out, let us say you are fortunate enough to generate free cash flow, and let us go 4 years out, how would you expect to use that cash to be used to pay down debt, dividends, buy back shares, what do you think you are going to be thinking if you are fortunate to be in that position?

**James Crowe**

So, it is a question fundamentally for the board, but I will give you one board member's view. If you look at Simon's model, and pick your own range of top line, I mean, this pension, try to pick a point estimate 2, 3 years out is just not useful. There is a cone of probability. But pick your number. We generate a fair amount of cash.

I said earlier that we want to invest in metro facilities to assure we have enough addressable market to maintain 80% gross margins. That is hard money to spend as I explained. We do not believe we can spend effectively as much as we will generate if we meet the kind of growth rates even at the low conservative end of a range. So that means we have got extra cash. That is a good thing.

You all know the various ways in which you can deploy extra cash. We hope – they depend on tax laws, on changes, and preferential return of capital to shareholders. It depends on other opportunities to deploy capital and high return efforts. So I would simply say look at our chief financial officer and his team, look at what they have been able to do over the last five or six or seven years.

From my perspective they have been wonderful at managing the balance sheet and cash flow in times of stress. It was only three or four years ago, lots of folks said, Level 3 is going to go bankrupt. I expect that they will bring that same skill to how we deploy our capital, and will do it on behalf of the shareholders. Hopefully I appropriately dodged being too specific around your question.

Personally, I would – so, we have spent three years in an effort to analyze the US addressable market. We have a database. It took us a long time to put it together. We have 3.8 million buildings in it. That is about 13 billion to 14 billion of recurring revenue a month in those buildings.

You know who is in there, you know the number of employees, the type of business by SIC code. You can make a pretty rationale estimate of the spend and it is about 13 billion, 14 billion per month in the US alone. If you say, and we can do this in the database show me the buildings based on an algorithm that has revenue, net ex, Opex, show me the buildings that have been greater than a 70% IRR. That is opportunity. You don't have to do anything more. We don't have to enter a brand-new business.

We don't have to hire a bunch of folks to get into cloud services. We don't have to invent anything. We have to get better and better at deploying capital in metros. We have three continents to do it on. So to answer your question, we are focusing a great deal of effort with some of our best executives to analyze, manage and deploy capital in the metro on all three continents.

And I would like to think that we could use a greater fraction of free cash in that effort because the returns are so high.

**Unidentified Analyst**

Jim, you talked about the Constellation product that they have introduced, I am just wondering competitively what you think about that product, and if you think Level 3 needs to move in that direction from a product standpoint.

**James Crowe**

I heard everything.Everything What is the product?

**Unidentified Analyst**

The Constellation product being more of a customer front-end platform.

**James Crowe**

I can't hear.

**Unidentified Analyst**

Yes, it is the Constellation platform that TW is rolling out.

**James Crowe**

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Bandwidth on demand. I have a long relationship with many of the people at TW Telecom. We work together, and I have a great admiration for them. I don't – I bought the product. I don't know the state of development. In general, we believe the market is looking for VPNs, which by definition are scalable.

We see this over and over again. Logical carving pipes out of the Internet with higher service levels, greater security, which is a huge issue, where we are spending a lot of time and energy. It seems to us it makes a lot of sense. I wish TW the best of luck. It is a job though to establish a new protocol, a new kind of service. I hope – we wish them well, but the standards are around Ethernet and IP VPNs, and that is where we are putting a lot of our time and energy and it is responsible for the 8%, small party enterprise growth last year and we think it will accelerate.

The number of global corporations that say, I have got 20 or 40 or 60 production locations I need to tie together, I can't deal with 400 different suppliers in a supply chain.

We would like to have a common platform with common service level agreements et cetera is startling and that is where we are focusing our time.

**Unidentified Analyst**

Unfortunately we're out of time. Jim, thank you very much. We appreciate it.

**James Crowe**

Thank you very much.

Attachment 7

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**Attachment 7**

**DECLARATION OF JULIE BROWN**

## I. Introduction

1. My name is Julie Brown. My business address is 930 15th Street, Denver, Colorado, 80202. 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 and cloud 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 12 years, holding positions in Wholesale Product and Pricing and Offer Management.

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 has declined by **[BEGIN CONFIDENTIAL]** [redacted] **[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 efficient and customer 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. CenturyLink's inability to offer simple, customized arrangements, free of time-consuming tariffing and other requirements, across its entire service area has sometimes excluded it from consideration for such contracts. 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. CenturyLink is well qualified to offer over its wide footprint the types of individualized nationwide arrangements covering geographically dispersed locations that enterprise broadband customers seek.
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, including uniform network topologies and technical characteristics that conform to their own networks but may be inconsistent with Embarq's or CenturyTel's tariffed offerings. For example, we have 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. Similarly, two wholesale wireline customers recently approached CenturyLink to buy Ethernet services so they could

respond to RFPs to serve an end user's business locations across the country. Of CenturyLink's 312 commercial agreements for enterprise broadband services executed over the last five years, 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 across the entire area covered by the contract 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, such customers often prefer to minimize the number of providers from which they obtain telecommunications services by buying across a larger footprint.

[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.

**B. Evolving, Interchangeable Services Available from Numerous Providers**

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 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.

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. When CenturyLink deploys fiber to a commercial building, it must obtain rights from the building owner, just like its

competitors, because it needs space and power in the building for its fiber-terminating devices. Also just like its competitors, CenturyLink typically must install or have the building owner install fiber inside wiring to the end user. Thus, CenturyLink must negotiate various types of permission from the building owner and, in many instances, compensate the owner for this access. CenturyLink also must build or obtain access to conduit from the property line to the building to deploy its fiber, and obtain any necessary permits for such conduit, which is typically controlled by the building owner, and fiber deployed in municipal rights of way. Regardless of provider, 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. CenturyLink does not possess an advantage in this regard over its non-ILEC competitors of enterprise broadband services.

12. The one common characteristic of these services is that they are available from numerous providers in nearly all locations. In responding to RFPs for Ethernet backhaul to wireless cell sites, for example, CenturyLink has faced competition from CLECs, cable companies and fiber wholesalers – as well as from wireless providers that self-provision their own backhaul services.

**C. Savvy Customers, Heavily-Negotiated Transactions**

13. 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.

14. 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. For example, a major 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. Similarly, another customer recently issued RFPs covering its wholesale purchases of enterprise broadband services across its entire network. After receiving responses to those RFPs, the customer picked the lowest bid that it had received in at least one location and reissued the RFPs with direction that respondents had to meet or beat that price in *every* location in order to be considered.

15. These customers also know what they want. In their RFPs or requests for service, they specify clear demands and are willing to engage in intensive 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

16. Dominant carrier regulation of certain CenturyLink enterprise broadband services has a significant negative impact both on customers and competition. While customers seek 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.

17. As noted, national purchasers of enterprise broadband services frequently seek uniform rates, terms and conditions across the entire area covered by the contract. For example, many wholesale customers prefer uniform rates because they are less administratively burdensome and allow customers 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 Qwest, potentially with different rates, terms and conditions in all three.

18. 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 average 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. Moreover, for some customers, this option often is not available, especially if a request for service is limited to areas where CenturyLink is subject to full tariffing obligations.

19. 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.

20. CenturyLink's customers and prospective customers have complained repeatedly 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. In many cases, these difficulties have caused customers

to take their business elsewhere. In a recent example, a national customer sought to extend the customized Metro Ethernet service arrangement it has with legacy Qwest to legacy Embarq and CenturyTel areas. When informed that this arrangement would conflict with legacy Embarq and CenturyTel's tariffs, the customer expressed deep frustration with this constraint and stated its intention to obtain service from another provider if CenturyLink could not offer uniform terms, in a simple manner, across its serving area.

21. Similarly, a wireless customer rejected CenturyLink's overall bid for its Ethernet services, but negotiated an agreement for Ethernet services in legacy Qwest's service territory, free from the constraints of dominant carrier regulation. The total value of the opportunity was substantially lower than it would have been for the combined company, and the customer did not receive the broader offering from CenturyLink that it had originally sought. Another wireless provider that sought Ethernet service primarily in legacy CenturyTel's service area balked at the inflexibility of CenturyTel's tariffed offering and took its business to another provider that could meet its demand. Together, CenturyTel and Embarq lost more than **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** in potential revenue from that one customer alone.

22. In the past three years, CenturyLink has lost at least **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** RFPs issued by wireless providers, covering approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** cell sites in areas served by legacy Embarq and CenturyTel, and costing approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** in potential revenue for CenturyLink. Each of these losses was to a competitor authorized to negotiate

customized service arrangements, with the uniform rates, terms and conditions demanded by wireless providers. One of these wireless providers told CenturyLink that its standard tariffed rates were too high, that the transaction was too complicated, and that it was giving its business to a competitor that could deliver the customized rates, terms and conditions that it sought.

23. CenturyLink has suffered similar losses with other types of enterprise broadband customers and services. Such losses are more difficult to quantify because wireline carrier customers, for example, do not typically issue RFPs for Ethernet and other enterprise broadband services. Instead, these carriers generally maintain a pricing tool that follows the rates available to that carrier from the various providers of enterprise broadband services in each given area. The prices listed for CenturyLink depend on whether its enterprise broadband services in that area are still subject to dominant carrier regulation. If they are, the pricing tool would list legacy Embarq or CenturyTel standard tariffed prices, which generally would exceed those individually negotiated by other providers.[3]

24. Thus, dominant carrier regulation ultimately undermines CenturyLink's ability to compete and customers' access to a full range of competitive choices and the lowest prices.

25. 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 Qwest, which generally can offer enterprise broadband services

[3] If Embarq has negotiated a contract tariff with the carrier, that carrier's pricing tool would list the rates in the contract tariff for the MSAs in which Embarq has pricing flexibility. Embarq has negotiated only two contract tariffs that cover its Ethernet Virtual Private Line service.

via commercial agreement. For a smaller customer, that often is not the case, especially if its request is limited to areas where CenturyLink has no pricing flexibility.

26. 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 three reasons.

27. *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 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.

28. 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 the customer. 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.

29. *Second*, dominant carrier regulation 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. Because CenturyLink is not able to reduce its tariffed rates quickly in response to competitors' price reductions, its modified tariffs themselves become a pricing umbrella, at least until CenturyLink can complete the lengthy process of reducing its tariffed rates again. By then, however, it is usually too late to secure the contracts for which CenturyLink was contending because its competitors already won those contracts at prices that are slightly lower than CenturyLink's tariffed rates but higher than they would have been if CenturyLink were unleashed from tariff regulation. This scenario 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.