

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
CenturyLink's Alternative Petition for Interim) WC Docket No. 13-
Waiver of Dominant Carrier Regulation and)
Computer Inquiry Tariffing Requirements)
Imposed on Enterprise Broadband Services)

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CENTURYLINK ALTERNATIVE PETITION FOR INTERIM WAIVER

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EXECUTIVE SUMMARY

One of the most important functions of any agency's waiver authority is to ensure that all comparable parties are treated alike. Waiver relief is often granted to provide regulatory parity with competitors or other similarly situated parties not subject to the rule or rules sought to be waived, particularly on an interim basis while the rule's future applicability is reviewed on an industry-wide basis. Waiver relief is particularly appropriate when the rule or rules to be waived restrict a carrier's freedom to respond to competition from comparable entities not subject to the rules, to the detriment of customer choice, price competition and innovation.

Accordingly, in the event that the Commission does not grant CenturyLink's simultaneously filed Petition for Forbearance, the Commission should grant an interim waiver of its dominant carrier regulations and the *Computer Inquiry* tariffing requirement with regard to CenturyLink's enterprise broadband services until such time as the Commission resolves how all incumbent enterprise broadband services should be regulated in an industry-wide context. An interim waiver would place CenturyLink in the same position as other significant national incumbent providers of enterprise broadband services pending such determination.

Virtually alone among significant providers of enterprise broadband services, CenturyLink is subject to a patchwork quilt of regulation, including dominant carrier regulation, that varies according to the legacy affiliate that provides each service. This disjointed set of regulations disrupts CenturyLink's attempts to respond quickly and compete effectively in the provision of enterprise broadband services, particularly to large customers seeking nationwide arrangements. The result is that competitive choice in, and efficient provision of, enterprise broadband service suffer, contrary to the public interest. Meanwhile, all of the other major

national enterprise broadband providers -- incumbents and competitive providers alike -- have been relieved of such requirements.

The requested relief would enable CenturyLink to respond more effectively to competition by offering competitively priced individualized nationwide arrangements tailored to the needs of large carriers and other enterprise customers. A waiver thus would put CenturyLink temporarily at parity with other major national providers of enterprise broadband services, thereby removing the current regulatory imbalance in this highly competitive market, and would foster competition and broadband innovation, thereby providing customers with more choices and lower prices.

Such regulatory parity and public interest benefits satisfy the "good cause" requirement for waiver relief as well as the Administrative Procedure Act's requirement that similarly situated parties be treated alike. The regulatory parity waiver policy is especially compelling, now that CenturyLink is the only major national provider of enterprise broadband services that is still subject to dominant carrier regulation, and much larger incumbents, as well as all of CenturyLink's other competitors, are free of such burdens. Waiver of the *Computer Inquiry* tariffing requirement also would bring about the same public interest benefits.

The Commission has authority to waive tariffing requirements on an interim basis as part of any interim waiver of dominant carrier and *Computer Inquiry* requirement. The Supreme Court has held that the Commission may defer or waive the tariffing obligation "altogether," and this authority has been exercised to the extent of granting an interim waiver of the Commission's tariffing requirements.

By its nature, an interim waiver cannot possibly have any effect on the final regulatory status of incumbent enterprise broadband services. The Commission can determine in other proceedings the competitiveness of the enterprise broadband market and resolve other issues bearing on the ultimate regulatory treatment of such services on an industry-wide basis. The Commission typically grants interim waivers in these circumstances, while deferring any examination of market power or other competition issues to other ongoing proceedings, and such waivers expire upon the final resolution of those regulatory issues. The requested relief would have no impact, even temporarily, on the Commission's regulation of TDM-based DS1 and DS3 services or the Commission's ongoing review of special access regulation.

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Broadband Services)	

CENTURYLINK ALTERNATIVE PETITION FOR INTERIM WAIVER

INTRODUCTION

Pursuant to Section 1.3 of the Commission's rules,¹ CenturyLink petitions for interim waiver of the Commission's dominant carrier regulations and the *Computer Inquiry* tariffing requirement with respect to its packet-switched and optical transmission services (together, "enterprise broadband services") that are still subject to those obligations. This petition seeks relief in the alternative to CenturyLink's simultaneously filed Petition for Forbearance from the same requirements.²

In the event the Petition for Forbearance is not granted, CenturyLink requests that dominant carrier regulation and the *Computer Inquiry* tariffing requirement be waived until such time as the Commission resolves the regulatory treatment of incumbent carrier enterprise broadband services on an industry-wide basis. An interim waiver would place CenturyLink in the same position as every other major national provider of enterprise broadband services pending such determination.

¹ 47 C.F.R. § 1.3.

² See CenturyLink Petition for Forbearance Pursuant to 47 U.S.C. § 160 (c) from Dominant Carrier Regulation and *Computer Inquiry* Tariffing Requirements on Enterprise Broadband Services, WC Docket No. 13- (filed Dec. 13, 2013) ("Petition for Forbearance").

Such interim waiver relief should include an interim waiver of all enterprise broadband service tariffing obligations. The Commission has authority under Section 203(b)(2) of the Communications Act of 1934 (“the Act”) to waive tariffing requirements on an interim basis.³ Indeed, the Supreme Court has held that the Commission may defer or waive the tariffing obligation “altogether in limited circumstances,”⁴ and this authority has been the basis for a “temporar[y] waive[r]” of tariffing requirements.⁵

By its nature, an interim waiver cannot possibly have any effect on or implications for the final regulatory status of incumbent enterprise broadband services and would have no impact on the Commission’s regulation of time-division multiplexing (“TDM”)-based DS1 and DS3 services or the Commission’s pending review of special access regulation. CenturyLink likewise will continue to be subject to the remaining requirements of Title II, including general common carrier obligations and Section 208 complaint procedures.

I. BACKGROUND

CenturyLink is filing this waiver petition as an alternative request to its Petition for Forbearance from application of the same regulations to the same services. CenturyLink believes that its forbearance request provides a more straightforward path to the beneficial result of nondominant carrier treatment of its provision of enterprise broadband services. If, however,

³ 47 U.S.C. § 203(b)(2).

⁴ *MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 234 (1994) (“*MCI v. AT&T*”).

⁵ See *Petition of Puerto Rico Tel. Co., Inc. and Puerto Rico Tel. Larga Distancia, Inc. for Waiver of Section 64.1903 of the Commission’s Rules*, Memorandum Opinion and Order, 25 FCC Rcd 17704, 17714-15 ¶ 22 & n.76 (WCB 2010) (“*Puerto Rico Waiver Order*”), modified, Order, 27 FCC Rcd 2495 (WCB 2012), modified, Order, 28 FCC Rcd 1072 (WCB 2013) (“*Puerto Rico Waiver Extension*”).

that petition is not granted, the Commission should grant this waiver petition as expeditiously as possible. The Wireline Competition Bureau could decide it on delegated authority, as it presents no “novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.”⁶

A. Other Major Providers of Enterprise Broadband Services Are Uniformly Regulated as Nondominant

With the exception of CenturyLink, the major national providers of enterprise broadband services are uniformly regulated as nondominant with respect to the provision of those services. Following the grant of Verizon’s forbearance petition by operation of law in 2006,⁷ the Commission adopted a series of orders forbearing from dominant carrier regulation and certain *Computer Inquiry* rules with respect to the enterprise broadband services provided at that time by AT&T, ACS of Anchorage, Embarq, Frontier and Qwest.⁸ Through these *Enterprise Broadband*

⁶ 47 C.F.R. §§ 0.91(m); 0.291(a)(2).

⁷ News Release, FCC, *Verizon Telephone Companies’ Petition for Forbearance from Title II and Computer Inquiry Rules with Respect to their Broadband Services Is Granted by Operation of Law*, WC Docket No. 04-440 (Mar. 20, 2006).

⁸ *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007) (“*AT&T Forbearance Order*”), *aff’d sub nom. Ad Hoc Telecomms. Users Comm. v. FCC*, 572 F.3d 903 (D.C. Cir. 2009) (“*Ad Hoc Appeal*”); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, Memorandum Opinion and Order, 22 FCC Rcd 16304 (2007) (“*ACS Dominance Forbearance Order*”); *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements*, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007) (“*Embarq Forbearance Order*”); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd

Forbearance Orders, the Commission placed these incumbent local exchange carriers (“ILECs”) on similar regulatory footing with competitive local exchange carrier (“CLEC”) providers of these services, which were already regulated as nondominant. With one exception, CenturyLink is not aware of any other ILECs that provide significant enterprise broadband services under dominant carrier regulation.⁹

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

Today, an enterprise broadband service provided by CenturyLink in its incumbent service territory may be subject to nondominant regulation, pricing flexibility or full price cap regulation, all depending on which CenturyLink ILEC affiliate -- legacy Qwest, Embarq or CenturyTel -- provides that service. Legacy Qwest is entirely nondominant in its enterprise broadband offerings. Legacy Embarq similarly can offer customers individually tailored commercial agreements, free from tariff and other dominant carrier regulation, with respect to some of its enterprise broadband services, but not with regard to its Ethernet Virtual Private Line

12260 (2008) (“*Qwest Forbearance Order*”). This petition refers to these orders collectively as the *Enterprise Broadband Forbearance Orders*.

⁹ Windstream has increased its presence in the enterprise broadband market significantly through its acquisition of PAETEC, see Craig Gailbraith, *Windstream ‘Transforms’ With PAETEC Mega-Merger*, Billing & OSS World (Aug. 1, 2011), available at <http://www.billingworld.com/news/2011/08/windstream-transforms-with-paetec-mega-merger.aspx>, but Windstream is not a significant national provider of such services, and the offerings of PAETEC and Windstream’s other CLEC affiliates are not subject to dominant carrier regulation.

("EVPL") service, which is its most popular Ethernet service, or Digital Video Transmission or Wave services. Thus, legacy Embarq typically provides EVPL service via general tariff.¹⁰

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

C. CenturyLink Seeks Interim Relief for its Enterprise Broadband Services That Are Still Subject to Dominant Carrier Regulation and the *Computer Inquiry* Tariffing Obligation

CenturyLink describes in Attachment A the specific services for which it seeks an interim waiver. They include Ethernet-Based Services, Video Transmission Services, and Optical Network Services. With the exception of the three Embarq services mentioned above, all of the services identified in Attachment A are CenturyTel services.¹¹ Each of these services fits within the definition of enterprise broadband services the Commission employed in the *Enterprise Broadband Forbearance Orders*: "non-TDM-based, packet-switched services capable of

¹⁰ The only exceptions are in 14 Metropolitan Statistical Areas ("MSAs") where Embarq has pricing flexibility that enables it to negotiate contract tariffs for channel terminations. Embarq has entered into only two such agreements covering EVPL services. See CenturyLink Operating Companies Tariff F.C.C. No. 9, §§ 24.3, 24.20 (eff. Mar. 1, 2011). Legacy CenturyTel has no pricing flexibility.

¹¹ All of the services identified in Attachment A are existing CenturyLink ILEC services, though CenturyLink has not yet deployed Wave service in CenturyTel and Embarq service areas.

transmitting 200 kbps or greater in each direction; and . . . non-TDM-based, optical transmission services.”¹²

D. CenturyLink Seeks Interim Relief from the Same Requirements Addressed in the *Enterprise Broadband Forbearance Orders*

In the *Enterprise Broadband Forbearance Orders*, the Commission granted forbearance from application of the following regulatory requirements to the specified services:

- Dominant carrier tariff filing and price cap regulations, including the duty to file cost support;¹³
- Dominant carrier discontinuance requirements;¹⁴
- Dominant carrier domestic transfer of control requirements;¹⁵ and
- The *Computer Inquiry* tariffing requirement.¹⁶

CenturyLink, which is similarly situated to the ILECs granted forbearance in those orders with regard to its enterprise broadband services, seeks interim waiver relief from the same requirements for the enterprise broadband services listed in Attachment A throughout its ILEC service territories.

¹² See, e.g., *AT&T Forbearance Order*, 22 FCC Rcd at 18713 ¶ 12.

¹³ See 47 U.S.C. §§ 203, 204(a)(3); 47 C.F.R. §§ 61.31-61.59. See also *AT&T Forbearance Order*, 22 FCC Rcd at 18726 ¶ 36, 18729 ¶ 42.

¹⁴ See 47 C.F.R. § 63.71. See also *Qwest Forbearance Order*, 23 FCC Rcd at 12282 ¶ 40.

¹⁵ See 47 C.F.R. § 63.03. See also *Qwest Forbearance Order*, 23 FCC Rcd at 12282 ¶ 40.

¹⁶ *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 FCC 2d 384 (1980) (“*Computer II Final Decision*”) (subsequent history omitted). See also *AT&T Forbearance Order*, 22 FCC Rcd at 18735-36 ¶¶ 59-62.

E. This Petition Will Not Interfere With Any Other Pending Proceedings

An interim waiver will have no impact on the Commission's pending special access rulemaking ("*Special Access NPRM*").¹⁷ The *Enterprise Broadband Forbearance Orders* expressly excluded "TDM-based . . . special access services" from the scope of the relief granted in those orders and noted that "concerns" regarding "the existing regulation of special access services other than those for which we grant relief, as in prior proceedings," "are more appropriately addressed on an industry-wide basis in pending rulemaking proceedings."¹⁸ Because CenturyLink is seeking interim relief from the same regulations as to the same services addressed in the *Enterprise Broadband Forbearance Orders*, this petition also excludes from its scope the "TDM-based . . . special access services" addressed in the Commission's review of special access regulation and thus cannot affect CenturyLink's provision of those services, even temporarily.

By its nature, an interim waiver also can have no impact on any Commission consideration of the ultimate regulatory treatment of enterprise broadband services on an industry-wide basis. Moreover, because the Commission can determine whether, and to what extent, dominant carrier regulation should be applied to ILEC enterprise broadband services in other proceedings, there is no need to resolve "arguments regarding the competitive nature of the

¹⁷ See *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) ("*Special Access NPRM*") subsequent history omitted).

¹⁸ *AT&T Forbearance Order*, 22 FCC Rcd at 18717 ¶ 20, 18722 ¶ 27; *Embarq Forbearance Order*, 19 FCC Rcd at 19489 ¶ 19, 19495 ¶ 26.

[enterprise broadband] market in this proceeding.”¹⁹ Thus, an interim waiver of dominant carrier regulation of enterprise broadband services can be granted without deciding or “prejudg[ing]” “broader issues related to the regulatory treatment of [enterprise broadband] services” on a permanent basis.²⁰

II. BOTH THE WAIVER PRINCIPLE OF REGULATORY PARITY AND THE ADMINISTRATIVE PROCEDURE ACT COMPEL WAIVER RELIEF

Orders granting or denying waivers are subject to judicial review under the “arbitrary and capricious” rubric of the Administrative Procedure Act (“APA”).²¹ Under the arbitrary and capricious standard, the agency must demonstrate that it gave the waiver petition a “hard look”²² and must “apply the same criteria to all [parties] petitioning for exemptions.”²³

The importance of treating all parties alike is illustrated by *Airmark*, a case involving denials of petitions for exemption from Federal Aviation Administration (“FAA”) noise regulations.²⁴ There, the D.C. Circuit held that “[d]eference to agency authority or expertise . . .

¹⁹ *Petition for Waiver of Pricing Flexibility Rules for Fast Packet Services*, Memorandum Opinion and Order, 20 FCC Rcd 16840, 16848 ¶ 14 (2005) (“*Verizon Advanced Services Waiver*”).

²⁰ *Qwest Petition for Waiver of Pricing Flexibility Rules for Advanced Communications Networks Services*, Order, 22 FCC Rcd 7482, 7484 ¶ 4 (WCB 2007) (“*Qwest Advanced Services Waiver*”) (together with *Verizon Advanced Services Waiver*, the “*Advanced Services Waiver Orders*”). See *infra*, Part III.C.

²¹ *Northeast Cellular Tel. Co. L.P. v. FCC*, 897 F.2d 1164, 1165 (D.C. Cir. 1990). See 5 U.S.C. § 706(2)(A).

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²³ *Airmark Corp. v. FAA*, 758 F.2d 685, 691 (D.C. Cir. 1985).

²⁴ *Id.*

'is not a license [for the agency] to . . . treat like cases differently.'"²⁵ The court found that, although the FAA "retains broad discretion to determine whether the public interest will be best served by granting or denying" exemptions, it had "utterly failed to provide a consistent approach" in ruling on the petitions at issue.²⁶ The court explained that "the FAA has arbitrarily applied different decisional criteria to similarly situated carriers."²⁷ For example, in granting an exemption to another carrier, "the FAA took an opposite view of the very considerations that had been fatal to" one of the petitions at issue.²⁸

Similarly, in *Marco Sales*, the Second Circuit reversed a Federal Trade Commission cease and desist order against a sales practice similar to practices previously permitted, holding that an agency is not permitted to "grant to one person the right to do that which it denies to another similarly situated. There may not be a rule for Monday [and] another for Tuesday . . .

.,,"²⁹

In *KCST-TV*, the D.C. Circuit remanded this Commission's denial of a waiver of a television broadcasting rule because the Commission failed to consider evidence demonstrating

²⁵ *Id.* (quoting *United States v. Diapulse Corp. of America*, 748 F.2d 56, 62 (2d Cir. 1984) (affirming lower court order allowing medical device to be marketed without FDA approval in light of its similarity, in all relevant respects, to a device previously approved by FDA)).

²⁶ *Id.* at 695.

²⁷ *Id.* at 692.

²⁸ *Id.* at 694.

²⁹ *Marco Sales Co. v. FTC*, 453 F.2d 1, 7 (2d Cir. 1971) (quoting *Mary Carter Paint Co. v. FTC*, 333 F.2d 654, 660 (5th Cir. 1964) (Brown, J., concurring), *rev'd on other grounds*, 382 U.S. 46 (1965)). See also *Local 777, Democratic Union Organizing Committee v. NLRB*, 603 F.2d 862, 872 (D.C. Cir. 1978) (an agency "cannot, despite its broad discretion, arbitrarily treat similar situations dissimilarly"); *id.* at 870 n.22 (NLRB reached "essentially a different decision on essentially the same facts").

“the invalidity of the [rule’s] underlying premise” in the particular circumstances presented.³⁰ In granting a prior waiver of a related rule to another party, the Commission had held that “[a] party demonstrating . . . the invalidity of [the] underlying premise [of the rule] is entitled to waiver.”³¹ The court stated that “[i]n the present case, [petitioner] has similarly attempted to show the invalidity of the underlying premise” of a related provision in the circumstances presented.³² In light of the demonstration of the invalidity of the rule’s premise, the court found that the rationale for the denial “has no logical application” to the facts presented in support of the waiver and, accordingly, set aside the waiver denial.³³ Thus, not only must the Commission treat similarly situated parties similarly, but it also must treat a waiver applicant analogously to other parties granted related relief.

The APA’s requirement that an agency apply the same “decisional criteria to similarly situated carriers”³⁴ echoes and reinforces the Commission’s well-established policy that the requisite “good cause” for a waiver can be established by a showing that a grant would bring about regulatory “parity” with the regulatory scheme governing similarly situated entities.³⁵ In *Terrestar Networks*, the International Bureau found that “good cause” was shown for a waiver of technical satellite rules partly because such relief “would comport with the Commission’s

³⁰ *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1193 (D.C. Cir. 1983).

³¹ *Id.* at 1193 (citation and internal quotation marks omitted).

³² *Id.*

³³ *Id.* at 1195.

³⁴ *Airmark*, 758 F.2d at 692.

³⁵ *TerreStar Networks Inc.*, Order and Authorization, 25 FCC Rcd 228, 236 ¶ 24 (IB 2010) (“*TerreStar Networks*”) (describing *New ICO Satellite Services G.P.*, Order and Authorization, 24 FCC Rcd 171, 185 ¶ 40 (IB 2009) (“*New ICO*”).

established requirements for comparable terrestrial services.”³⁶ The Bureau also noted that it had “waived the same rule” for another satellite provider because “waiver would put” the other provider’s operations “at parity with” comparable terrestrial services.³⁷ That order also found that the rationale for granting a waiver of another technical rule to another satellite service provider “also constitute[s] good cause for granting a parallel waiver for TerreStar.”³⁸ Similarly, when the Fox Networks Group sought a waiver of the “network representation” TV advertising rule in order to bring about “a level playing field” in the U.S. Spanish language broadcast

³⁶ *Id.* at 235 ¶ 22.

³⁷ *Id.* at 236 ¶ 24 (describing *New ICO*, 24 FCC Rcd at 185 ¶ 40 (waiving technical satellite rules to permit base station operations consistent with the Commission’s “requirements for comparable terrestrial services”). See also *Samsung Electronics America, Inc.*, Memorandum Opinion and Order, 2013 FCC LEXIS 3744 at *10 ¶ 5 (MB Sept. 6, 2013) (“*Samsung*”) (waiver of analog cable tuner requirements “will provide regulatory parity between” Samsung’s digital cable tuner and cable-leased set-top boxes with which it competes); *TiVo, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 12181, 12185 ¶ 6 (MB 2013) (“*TiVo*”) (waiver of same rule will “provide . . . regulatory parity”).

³⁸ *TerreStar Networks*, 25 FCC Rcd at 233 ¶ 16. See also *AirCell, Inc. and Western Wireless Petition for Waiver of the Airborne Cellular Rule*, Order, 15 FCC Rcd 1639, 1640-41 ¶ 5 & n.12 (WTB 1999) (“granting . . . identical” “me too” waivers of rule prohibiting airborne use of cellular phones) (citation omitted), *aff’d*, *AirCell, Inc. Petition Pursuant to Section 7 of the Act For a Waiver of the Airborne Cellular Rule, Or, in the Alternative, for a Declaratory Ruling*, Memorandum Opinion and Order, 15 FCC Rcd 9622, 9641-42 ¶ 39 (2000) (affirming waivers granted to parties arguing that “it would be arbitrary and capricious (as well as ‘unprincipled and discriminatory’) for the Bureau not to grant a waiver to one party showing the same special circumstances and the same public interest factors previously found sufficient to justify a waiver to another party”) (citation omitted), *aff’d in part and rev’d in part on other grounds sub nom.*, *AT&T Wireless Services, Inc. v. FCC*, 270 F.3d 959 (D.C. Cir. 2001); *NYNEX Tel. Cos. Petition for Waiver of Section 69.4(b) of the Commission’s Rules*, Memorandum Opinion and Order, 10 FCC Rcd 4593, 4595 ¶ 4 (CCB 1995) (“as good cause existed to” grant a waiver of an access charge rule to other carriers, “it exists as well to” grant the same waiver to NYNEX); *BellSouth Telecommunications, Inc. Petition for Waiver of Section 69.4(b) of the Commission’s Rules*, Memorandum Opinion and Order, 10 FCC Rcd 3312, 3313 ¶ 7 (CCB 1995) (same rationale).

television market, the Media Bureau granted the waiver “in recognition of the competitive imbalance that could result in the absence of a waiver.”³⁹

These orders are especially significant because they include not only instances where waiver relief for one service provider was found to “constitute good cause for granting a parallel waiver for” a similar competitive provider,⁴⁰ but also situations in which waivers were granted to bring about “parity” between the petitioner’s services or products and the regulatory status of a “comparable” class of services or products not resulting from a previous waiver.⁴¹ Accordingly, waiver relief is perfectly appropriate in order to bring about “parity” with “comparable”⁴² entities that enjoy a more favorable regulatory status or that were granted similar relief by means other than previous waivers, such as forbearance.

Most of the cases discussed above applied the waiver principle of regulatory parity or the APA requirement of similar treatment for similarly situated parties in order to treat one party similarly to another entity or entities. Both principles are even more important here, where similar relief has already been granted to much larger ILECs and the last major national provider of enterprise broadband services still under dominant carrier regulation seeks similar treatment. “[P]ut[ting]” CenturyLink “at parity with” other providers of “comparable” enterprise broadband

³⁹ *Fox Networks Group, Inc.*, Order, 27 FCC Rcd 5158, 5158 ¶ 2, 5160 ¶ 5 (MB 2012) (“*Fox*”). See also *Spanish Broadcasting System, Inc. (Mega TV)*, Order, 26 FCC Rcd 16911, 16911 ¶ 2, 16913 ¶ 5 (MB 2011) (“*Spanish Broadcasting*”) (waiver of same rule granted for identical reasons); *Lieberman Television LLC, (Estrella TV)*, Order, 25 FCC Rcd 4725, 4725 ¶ 2, 4726 ¶ 5 (MB 2010) (“*Lieberman Television*”) (waiver of same rule granted for identical reasons).

⁴⁰ *TerreStar Networks*, 25 FCC Rcd at 233 ¶ 16.

⁴¹ *Id.* at 235 ¶ 22, 236 ¶ 24 (waiver for satellite services to “put” them “at parity with” terrestrial services); *Samsung*, 2013 FCC LEXIS 3744 at *10 ¶ 5 (waiver for digital cable tuners to “provide regulatory parity between” them and cable-leased set-top boxes).

⁴² See *TerreStar Networks*, 25 FCC Rcd at 235 ¶ 22, 236 ¶ 24.

services would establish especially “good cause” for waiver relief.⁴³ A waiver would bring about “a level playing field” in the enterprise broadband market and thereby relieve “the competitive imbalance” that exists now.⁴⁴ Failure to provide CenturyLink regulatory “parity” with “comparable . . . services”⁴⁵ in such circumstances would unfairly and arbitrarily “treat like cases differently” to an extreme degree, in violation of the APA’s requirement of equal treatment.⁴⁶ A stronger equitable case for the application of “the same criteria to all [parties]”⁴⁷ -- including “regulatory parity”⁴⁸ -- would be hard to imagine.

III. GOOD CAUSE IS EASILY DEMONSTRATED FOR WAIVER RELIEF FROM DOMINANT CARRIER REGULATION OF CENTURYLINK’S ENTERPRISE BROADBAND SERVICES

Section 1.3 of the Commission’s rules authorizes it to waive or suspend any of its rules for “good cause.”⁴⁹ A waiver may be granted where strict compliance would, under the particular circumstances presented, be inconsistent with the public interest.⁵⁰ In reviewing a waiver request, the Commission may take into account considerations of hardship, equity or more effective implementation of overall policy.⁵¹ Well-supported waiver petitions must not be

⁴³ *Id.*

⁴⁴ *Fox*, 27 FCC Rcd at 5158 ¶ 2, 5160 ¶ 5.

⁴⁵ *TerreStar Networks*, 25 FCC Rcd at 235 ¶ 22, 236 ¶ 24.

⁴⁶ *Airmark Corp.*, 758 F.2d at 691 (citation omitted).

⁴⁷ *Id.*

⁴⁸ *Samsung*, 2013 FCC LEXIS 3744 at *10 ¶ 5; *see also TerreStar Networks*, 25 FCC Rcd at 236 ¶ 24.

⁴⁹ 47 C.F.R. § 1.3.

⁵⁰ *Northeast Cellular*, 897 F.2d at 1166.

⁵¹ *See WAIT Radio*, 418 F.2d at 1159.

perfunctorily denied.⁵² Waiver thus is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would serve the public interest better than would strict adherence.⁵³

A. Providing “Regulatory Parity” Constitutes Good Cause for Waiver Relief

1. The Costs of the “Competitive Imbalance” Resulting From a Lack of “Regulatory Parity” in Enterprise Broadband Services Are Well Known

The Commission well described the burdens imposed on the enterprise broadband service market by uneven regulation and the public interest benefits of regulatory parity in the *AT&T Forbearance Order*. It noted that “dominant carrier regulation impedes AT&T’s efforts to compete effectively with nondominant providers of these services” by “keep[ing] AT&T from responding efficiently and in a timely manner to market-based pricing promotions, including volume and term discounts, or special arrangements offered by competitors” and by “mak[ing] it unnecessarily difficult for [AT&T] to negotiate nationwide arrangements tailored to the needs of large enterprise customers.”⁵⁴ The other *Enterprise Broadband Forbearance Orders* reiterated these concerns.⁵⁵

Accordingly, the Commission held that, in light of the nondominant treatment of competitors’ enterprise broadband services, eliminating dominant carrier regulation for AT&T’s

⁵² *Id.* at 1157 (citing *Pikes Peak Broadcasting Co. v. FCC*, 422 F.2d 671, 682 (D.C. Cir. 1969), *cert. denied*, 395 U.S. 979 (1969)).

⁵³ *Northeast Cellular*, 897 F.2d at 1166. *See also Puerto Rico Waiver Order*, 25 FCC Rcd at 17710 ¶ 12 n.47.

⁵⁴ *AT&T Forbearance Order*, 22 FCC Rcd at 18731 ¶ 46.

⁵⁵ *See Qwest Forbearance Order*, 23 FCC Rcd at 12286-87 ¶ 49, 12288 ¶ 52; *Embarq Forbearance Order*, 22 FCC Rcd at 19503 ¶ 45, 19504 ¶ 48; *ACS Dominance Forbearance Order*, 22 FCC Rcd at 16355-56 ¶ 117.

offerings of those services would “serve the public interest by eliminating the market distortions that asymmetrical regulation” causes and “*promoting regulatory parity* among providers of these services.”⁵⁶ “We seek to avoid persistent regulatory disparities between similarly-situated competitors, and seek to minimize the time in which they are treated differently.”⁵⁷ Thus, the “regulatory parity” that waiver relief can “provide”⁵⁸ parallels the Commission’s rationale for relieving ILEC enterprise broadband services of dominant carrier regulation in other types of proceedings. The “competitive imbalance” that the Commission has found between providers of enterprise broadband services still subject to dominant carrier regulation and those previously relieved of such regulation accordingly compels waiver relief to bring about “a level playing field.”⁵⁹

2. The Same Competitive Concerns Justified Waiver Relief in the *Advanced Services Waiver Orders*

The Commission granted waiver relief based on similar competitive concerns for the types of broadband services at issue here in the *Advanced Services Waiver Orders*.⁶⁰ In the *Verizon Advanced Services Waiver*, the Commission granted a waiver to allow Verizon to exercise pricing flexibility for its advanced packet switched broadband services in certain areas.⁶¹ Because its advanced services had not been subject to price cap regulation, they could not qualify

⁵⁶ *AT&T Forbearance Order*, 22 FCC Rcd at 18730-31 ¶ 46, 18732 ¶ 49 (emphasis added).

⁵⁷ *Id.* at 18732 ¶ 50.

⁵⁸ *Samsung*, 2013 FCC LEXIS 3744 at *10 ¶ 5; *TiVo*, 28 FCC Rcd at 12185 ¶ 6.

⁵⁹ *Fox*, 27 FCC Rcd at 5158 ¶ 2, 5160 ¶ 5; *Spanish Broadcasting*, 26 FCC Rcd at 16911 ¶ 2, 16913 ¶ 5; *Liberman Television*, 25 FCC Rcd at 4725 ¶ 2, 4726 ¶ 5.

⁶⁰ See *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7484 ¶ 5; *Verizon Advanced Services Waiver*, 20 FCC Rcd 16840.

⁶¹ *Verizon Advanced Services Waiver*, 20 FCC Rcd 16840.

for pricing flexibility in the absence of a waiver.⁶² Verizon sought a waiver in order to “respond to competition effectively” by “offer[ing] individually negotiated contracts for these advanced services and to adjust prices . . . for different customer and market segments.”⁶³ Verizon noted that BellSouth’s comparable advanced services were incorporated into its price cap offerings and thus qualified for pricing flexibility without a waiver and that SBC was able to exercise pricing flexibility for comparable services through a grant of forbearance.⁶⁴

The Commission found good cause for a waiver to permit Verizon to exercise pricing flexibility for its advanced services in those areas where its other special access services had qualified for such flexibility because such relief would “promote[] competition for advanced services, resulting in more choices and better prices for customers.”⁶⁵ The Commission also noted that the purpose of the pricing flexibility rules is “to allow incumbent LECs to respond to competition as it develops” by “lowering prices for particular customers.”⁶⁶

Thus, waiver relief was granted in order to allow Verizon to exercise the same pricing flexibility in its offering of advanced services that its competitors enjoyed and that other ILECs exercised -- in the case of SBC, *through forbearance relief*. Subsequently, in the *Qwest Advanced Services Waiver*, Qwest was granted similar waiver relief under the same competitive rationale, *i.e.*, “that the waiver granted here serves the public interest” by “[p]roviding Qwest the flexibility to offer contract tariffs tailored to the needs of individual customers,” which “will

⁶² *Id.* at 16843-44 ¶ 7.

⁶³ *Id.* at 16842 ¶ 4.

⁶⁴ *Id.* at 16843 ¶ 7 & n.24.

⁶⁵ *Id.* at 16844-45 ¶¶ 8-9.

⁶⁶ *Id.* at 16848-49 ¶ 15.

enable it to respond more effectively to competition” and thereby “promote competition in the market for advanced services and result in more choices and better prices for customers.”⁶⁷

Fostering competition and innovation has been found to be sufficient good cause for a waiver in other circumstances as well.⁶⁸

B. Regulatory Parity for CenturyLink’s Enterprise Broadband Services Would Bring About Public Interest Benefits Qualifying for Waiver Relief

1. Waiver Relief Would Eliminate the Anticompetitive Restrictions Preventing Competitive Choices and Lower Rates for Customers

CenturyLink faces precisely the same burdens from “asymmetrical regulation” in the enterprise broadband market that the Commission identified in the *Enterprise Broadband Forbearance Orders*, and it lacks “the flexibility to offer contract[s] . . . tailored to the needs of individual customers” that the Commission identified as a “public interest” benefit of waiver relief in the *Advanced Services Waiver Orders*.⁶⁹ Meanwhile, its unregulated competitors have had a head start of years to enjoy their advantages.

The “one size fits all” tariff offerings that CenturyLink is required to file in its legacy CenturyTel service areas are particularly ill-suited for responding to Requests for Proposals

⁶⁷ *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7485 ¶ 7.

⁶⁸ See *Bell Atlantic Tel. Cos. Southwestern Bell Tel. Co. Petition for Waiver of Section 69.4(b) of the Commission’s Rules*, Memorandum Opinion and Order, 9 FCC Rcd 7868, 7869 ¶ 10, 7870 ¶ 16 (CCB 1994) (waiver of same access charge rule waived for another ILEC granted because it would “bring . . . customers a greater choice of . . . services,” thereby “foster[ing] competition”); *Southwestern Bell Tel. Co. Petition for Waiver of Section 69.105(b)(1)(i) of the Commission’s Rules*, Order, 8 FCC Rcd 1282, 1283 ¶ 6 (CCB 1993) (“waiver [of an access charge rule] will further the Commission’s goals by increasing the number of options available to . . . customers and fostering competition for innovative new services.”); *Brookings Municipal Tel. Petitions for Waiver of Sections 69.3(e)(6) and 69.3(b)(2) of the Commission’s Rules*, Order, 8 FCC Rcd 2320, 2320 ¶ 4, 2321 ¶ 6 (CCB 1993) (waiver will allow petitioner to reduce access rates and compete more effectively with US West).

⁶⁹ *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7485 ¶ 7.

("RFPs") for multiple locations from purchasers with highly specific individual needs and preferences, depriving customers of a full range of choices and rates. CenturyLink's standardized tariff offerings pale in comparison to the customized arrangements that customers can obtain from CenturyLink's nondominant competitors and therefore place CenturyLink at a competitive disadvantage.⁷⁰

One of CenturyLink's key selling points is its extensive geographic reach -- both in metropolitan and rural areas -- particularly given the synergies inherent in the CenturyTel-Embarq and CenturyLink-Qwest mergers.⁷¹ CenturyLink accordingly is well qualified to offer the types of individualized nationwide arrangements covering geographically dispersed locations sought by large customers, such as Ethernet backhaul offerings that let wireless providers serve thousands of cell sites.

In many cases, however, the regulations still imposed on legacy CenturyTel and, to a large extent, legacy Embarq -- alone among major national enterprise broadband competitors -- hobble CenturyLink overall by making it impossible to respond on a company-wide basis to competitive offerings on the streamlined basis that all other major national providers of enterprise broadband services do. CenturyLink's inability to offer simple, customized arrangements, free of cumbersome and time-consuming tariffing and other requirements, across its entire service area has sometimes excluded it from consideration for such contracts.⁷²

⁷⁰ See Petition for Forbearance at 41-42.

⁷¹ *Id.* at 56. See, e.g., *Applications filed by Qwest Communications Int'l Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer Control*, Memorandum Opinion and Order, 26 FCC Rcd 4194, 4198 ¶ 6 (2011).

⁷² See Petition for Forbearance at 56.

Even where CenturyLink has won the customer's business, the disparate regime imposed by the disjointed regulations governing CenturyLink's different affiliates has required needlessly complicated transactions that vainly attempt to emulate the uniform arrangements sought by customers, and that CenturyLink's competitors can provide. Customers are frequently required to purchase via tariff from CenturyTel and Embarq and by commercial agreement from legacy Qwest, potentially with different rates, terms and conditions for all three CenturyLink affiliates.⁷³

Continuing inefficient, outdated dominant carrier regulation of one corner of one company in an increasingly dynamic marketplace -- and virtually nowhere else in the national enterprise broadband market -- needlessly adds costs, hampers competition and frustrates customers' desired serving arrangements, thereby slowing the deployment of broadband services. CenturyLink's simultaneously filed Petition for Forbearance provides examples of the difficulties it has encountered arising from these burdens.⁷⁴

Although it is occasionally possible to avoid these limitations by modifying or adding tariff provisions to adapt to customer-specific requirements, this approach generally falls short because few enterprise broadband service customers are willing to wait for months while tariff modifications are implemented. Also, CenturyLink's competitors often quickly adjust their prices to remain just below CenturyLink's new tariffed rate, which quickly becomes a pricing

⁷³ *Id.* at 43, 56-59. In an effort to avoid these problems, sometimes CenturyLink attempts to 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 satisfactory to some customers, that approach adds unnecessary complexity both for the customer and CenturyLink. 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, and it does not address customer demand for uniform non-rate terms and conditions. *Id.* at 43.

⁷⁴ *See id.* at 57-58.

umbrella as a result, and it is difficult to develop a tariffed offering that appropriately limits the availability of that offering to similarly situated customers (*i.e.*, those willing to accept the same terms and conditions). Thus, dominant carrier regulation results in *all* enterprise broadband customers paying higher rates than they would have paid if CenturyLink were regulated as a nondominant carrier for all of its enterprise broadband services.⁷⁵

As the *Enterprise Broadband Forbearance Orders* explain, regulatory constraints on a provider of services in a vigorously competitive market are not merely a problem for the regulated provider; they represent *losses to consumers*.⁷⁶ The Commission has found that it is “customers” that “benefit from the ability of all competitors to respond to competing market-based price offerings,” and “customers . . . benefit by our granting . . . relief from [dominant carrier] regulation” of enterprise broadband services because such regulation “reduces [the] ability to respond in a timely manner to . . . customers’ demands for innovative service arrangements.”⁷⁷ “[E]liminating these requirements . . . make[s] petitioner] a more effective competitor . . . which in turn . . . increase[s] even further the amount of competition in the marketplace.”⁷⁸

Thus, when CenturyLink loses a potential customer’s business because it cannot freely respond to a competitive offering, the customer has lost the benefit of the lower price that CenturyLink could have offered. Hobbling one competitor in this way misallocates resources

⁷⁵ See *id.* at 44-46.

⁷⁶ *AT&T Forbearance Order*, 22 FCC Rcd at 18723 ¶ 29, 18725 ¶ 33, 18726 ¶ 35, 18730 ¶ 43; *Embarq Forbearance Order*, 22 FCC Rcd at 19496 ¶ 28, 19497 ¶ 32, 19498 ¶ 34, 19502 ¶ 42; *Qwest Forbearance Order*, 23 FCC Rcd at 12279 ¶ 32, 12280-81 ¶ 36, 12282 ¶ 38, 12285 ¶ 46.

⁷⁷ *AT&T Forbearance Order*, 22 FCC Rcd at 18723 ¶ 29, 18725 ¶ 33 (emphasis added).

⁷⁸ *Id.* at 18726 ¶ 35.

and raises costs, thereby reducing consumer welfare. That is why, in the *Advanced Services Waiver Orders*, “[p]roviding . . . the flexibility to offer contract tariffs tailored to the needs of individual customers [that] will enable [an ILEC] to respond more effectively to competition” was held to serve the “public interest” -- not just the carrier’s interest -- thereby satisfying the good cause requirement for waiver relief.⁷⁹ In these circumstances, as in the *Advanced Services Waiver Orders*, “the waiver will promote competition in the market for advanced services and result in more choices and better prices for customers,”⁸⁰ which constitutes a more effective implementation of public policy than strict adherence to regulation would be.⁸¹

The amount of business that CenturyLink has lost due to its unique regulatory burdens thus should provide at least a rough index of the economic inefficiency and consumer losses resulting from those burdens, to the detriment of the public interest. The simultaneously filed Petition for Forbearance provides further data on the known losses arising from the competitive imbalance caused by CenturyLink’s disproportionate regulatory burdens.⁸²

Accordingly, just as in the case of the pricing flexibility waivers granted in the *Advanced Services Waiver Orders*, a waiver of dominant carrier regulation is appropriate here “to allow [CenturyLink] to respond to [enterprise broadband services] competition as it develops,”⁸³ and “offer individually negotiated contracts for . . . [enterprise broadband] services and to adjust

⁷⁹ See *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7485 ¶ 7.

⁸⁰ See *id.*

⁸¹ See *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1159.

⁸² See Petition for Forbearance at 47, 57.

⁸³ *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16848-49 ¶ 15.

prices . . . for different customer and market segments,”⁸⁴ and thereby “promote competition in the market for [enterprise broadband] services and . . . more choices and better prices for customers.”⁸⁵ Ultimately, as in the waiver cases discussed above, customers will benefit from a waiver bringing about “a level playing field” in the enterprise broadband market, which would relieve “the competitive imbalance” that exists now.⁸⁶

In addition to eliminating CenturyLink’s tariffs as a pricing umbrella for other providers, and thereby putting downward pressure on prices, the requested relief also will facilitate investment in broadband facilities and extend the reach of wired and wireless broadband services. The simultaneously filed Petition for Forbearance provides additional detail regarding the public interest benefits of correcting a regulatory imbalance affecting a carrier’s provision of enterprise broadband services.⁸⁷

In short, waiver would achieve the broadband service public interest benefits of the *Advanced Services Waiver Orders* and promote the “level playing field” ensured by waiver orders redressing a “competitive imbalance” by “put[ting]” service providers “at parity with” “comparable . . . services.”⁸⁸ CenturyLink, like virtually all other significant enterprise broadband providers, will be able to develop companywide offerings at uniform rates, terms and

⁸⁴ See *id.* at 16842 ¶ 4.

⁸⁵ *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7485 ¶ 7.

⁸⁶ *Fox*, 27 FCC Rcd at 5158 ¶ 2, 5160 ¶ 5.

⁸⁷ See Petition for Forbearance at 49-56. See also *AT&T Forbearance Order*, 22 FCC Rcd at 18732 ¶ 49 (waiver will encourage broadband investment and deployment); *Qwest Forbearance Order*, 23 FCC Rcd at 12287-88 ¶¶ 50, 52; *Embarq Forbearance Order*, 22 FCC Rcd at 19503-04 ¶¶ 46, 48; *ACS Dominance Forbearance Order*, 22 FCC Rcd at 16356 ¶ 118.

⁸⁸ *Fox*, 27 FCC Rcd at 5158 ¶ 2, 5160 ¶ 5; *TerreStar Networks*, 25 FCC Rcd at 235 ¶ 22, 236 ¶ 24.

conditions, as demanded by customers. Waiver thus would allow CenturyLink to provide the “customer[] . . . benefit of a single regime for . . . [enterprise] broadband offerings.”⁸⁹ Such harmonization would enable CenturyLink to leverage the synergies that should be inherent in the CenturyTel-Embarq and CenturyLink-Qwest mergers, but which have been denied to CenturyLink -- and to its potential customers -- in its marketing of enterprise broadband services.⁹⁰

2. The Competitiveness of the Enterprise Broadband Services Market Provides Further Assurance That Waiver Relief Would be in the Public Interest

Although the Commission need not reach any ultimate conclusions as to the competitiveness of the enterprise broadband market in order to grant the interim relief sought here,⁹¹ the vigorous competition that marks the enterprise broadband market today provides further reassurance that waiver relief would advance the public interest. The Commission characterized the enterprise broadband services marketplace as “highly competitive” in the

⁸⁹ *AT&T Forbearance Order*, 22 FCC Rcd at 18729 ¶ 42 (emphasis added); see also *Qwest Forbearance Order*, 23 FCC Rcd at 12284 ¶ 45; *Embarq Forbearance Order*, 22 FCC Rcd at 19501 ¶ 41.

⁹⁰ See Petition for Forbearance at 57-58.

⁹¹ See, e.g., *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16848 ¶ 14 (no need to resolve “arguments regarding the competitive nature of the [enterprise broadband] market in this [waiver] proceeding”); *Puerto Rico Waiver Order*, 25 FCC Rcd at 17713-14 ¶¶ 20-21 (interim waiver of dominant carrier regulation granted in order to allow petitioner to submit evidence of nondominance); *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7484 ¶ 4 (interim waiver of dominant carrier regulation “[does] not prejudice” “broader issues related to the regulatory treatment of [enterprise broadband] services”). See also *infra*, Part III.C.

Enterprise Broadband Forbearance Orders,⁹² and that market has become even more competitive in the intervening years. The lifting of dominant carrier regulation from virtually the entire ILEC enterprise broadband industry, including market leaders Verizon and AT&T, has brought about increased customer benefits, including lower prices, with no reported harm to customers. At least 30 providers now offer enterprise broadband services nationally or to large areas of the country. The simultaneously filed Petition for Forbearance provides additional detail demonstrating the increased vigor of competition in today's enterprise broadband market.⁹³

The relatively modest scale of CenturyLink's enterprise broadband services is another factor supporting waiver here.⁹⁴ CenturyLink still accounts for less than ten percent of the national enterprise broadband market by various measures, far behind market leaders AT&T and Verizon and CLEC tw telecom.⁹⁵ Given the intense competition for these services today, and CenturyLink's relatively small market position, dominant carrier regulation is especially unnecessary and counterproductive. As in the *Advanced Services Waiver Orders*, relief would

⁹² *AT&T Forbearance Order*, 22 FCC Rcd at 18719-20 ¶ 23, 18725 ¶ 33. See also *Embarq Forbearance Order*, 22 FCC Rcd at 19492 ¶ 22; *Qwest Forbearance Order*, 23 FCC Rcd at 12275 ¶ 26.

⁹³ See Petition for Forbearance at 14-16, 27-31 & Attachment 9.

⁹⁴ In granting an application for assignment of a radio station license in *Application of Barnco, Inc. (Assignor) and Waitt Radio, Inc. (Assignee) For Assignment of Licenses of KOLK (FM), Onawa, Iowa*, Memorandum Opinion and Order, 14 FCC Rcd 5414, *recon. denied*, 15 FCC Rcd 7194 (1999), the Commission also granted a related waiver of the "one-to-a-market" rule, which restricts common radio and television station ownership in the same market. The Commission found that a waiver would be in the public interest partly because the joint operation of the radio station owned by the assignor and the television station owned by the assignee would not adversely affect competition, based partly on "the fact that the stations at issue compete with comparable or technically superior facilities." *Id.* at 5419 ¶ 15. CenturyLink also competes with "comparable" or larger providers of enterprise broadband services that are not subject to dominant carrier regulation.

⁹⁵ Petition for Forbearance at 31-37.

“enable [CenturyLink] to respond more effectively to competition”⁹⁶ and thereby “promote[] competition for advanced services.”⁹⁷

The same competitive public interest considerations that make a waiver of dominant carrier regulation appropriate overall also apply to the *Computer Inquiry* requirement to offer, pursuant to tariff, the basic transmission services underlying an ILEC’s enhanced services.⁹⁸ In addition, that tariffing requirement presents the same competitive obstacles as dominant carrier tariffing requirements: (1) it undermines competition by enabling CenturyLink’s rivals to anticipate CenturyLink’s rate changes, while hobbling CenturyLink’s ability to respond to competitors’ promotions, and (2) it prevents enterprise broadband customers from obtaining the individualized arrangements that they seek.⁹⁹

3. The Requested Waiver Would Not Affect Facilities Needed by Competitors

The *Advanced Services Waiver Orders* are relevant here in another respect as well. The Commission rejected opposition arguments that competitive advanced service providers depend

⁹⁶ *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7485 ¶ 7.

⁹⁷ *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16845 ¶ 9.

⁹⁸ See *AT&T Forbearance Order*, 22 FCC Rcd at 18735 ¶ 60, 18735-36 ¶ 62; *Embarq Forbearance Order*, 22 FCC Rcd at 19505 ¶ 52, 19505-06 ¶ 54; *Qwest Forbearance Order*, 23 FCC Rcd at 12279-80 ¶¶ 32-35 and notes accompanying this text.

⁹⁹ CenturyLink does not seek a waiver in this petition of any other *Computer Inquiry* rules that apply to other facilities-based providers, including nondominant providers. The *Computer Inquiry* rules require that these providers (a) offer as telecommunications services the basic transmission services underlying their enhanced services, and (b) offer those telecommunications services on a nondiscriminatory basis to all enhanced service providers, including their own enhanced services operations. See *AT&T Forbearance Order*, 22 FCC Rcd at 18735 ¶ 59 (citing *Computer II Final Decision*, 77 FCC 2d at 474-75 ¶ 231); *Embarq Forbearance Order*, 22 FCC Rcd at 19505 ¶ 51 (citing *Computer II Final Decision*, 77 FCC 2d at 474-75 ¶ 231); *Qwest Forbearance Order*, 23 FCC Rcd at 12263-64 ¶ 6 & nn.22, 23, 26 & 27.

on Verizon's special access facilities to reach end users, noting that "[t]his proceeding does not give Verizon any additional authority to change prices for these facilities" and that those facilities thus would be unaffected by the waiver and would remain available.¹⁰⁰ Similarly, competitors also can rely on CenturyLink's special access services and Unbundled Network Elements ("UNEs") to provide enterprise broadband services. The simultaneously filed Petition for Forbearance provides additional detail regarding competitors' use of ILEC TDM-based facilities to provide their enterprise broadband services.¹⁰¹

As the Commission has stated, "the elimination of dominant carrier regulation of the ILECs' Ethernet inputs cannot harm the competitive provision of Ethernet service that does not use the ILECs' Ethernet inputs."¹⁰² Accordingly, competitors' use of ILEC low-cost facilities to provide their enterprise broadband services will remain unaffected by the waiver sought here, just as competitors' use of Verizon's special access facilities was unaffected by its pricing flexibility waiver.¹⁰³

¹⁰⁰ *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16846 ¶ 11.

¹⁰¹ *See* Petition for Forbearance at 29-30.

¹⁰² Brief for the FCC at 25, *Ad Hoc Telecommunications Users Committee v. FCC*, No. 07-1426 (D.C. Cir. filed Dec. 3, 2008). The availability of CenturyLink UNE loops would not be affected by the grant of this petition.

¹⁰³ *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16846 ¶ 11.

C. Interim Waiver Relief is Especially Appropriate Given That the Ultimate Regulatory Treatment of Enterprise Broadband Services Can be Addressed in Other Proceedings, and Any Interim Waiver Would Expire upon Their Resolution

“The Commission has previously granted waivers of commission rules pending the outcome of rulemaking proceedings”¹⁰⁴ in a variety of circumstances where such waivers will enable carriers to operate more efficiently¹⁰⁵ and “deploy innovative new services and encourage the rapid deployment of new technologies and advanced services.”¹⁰⁶ Such waivers “expire upon the effectiveness of any order or, if applicable, rule changes, that result from the accompanying rulemaking.”¹⁰⁷ By its nature, such a waiver has no effect on, or reflects “any assumptions on any matter at issue in,” the rulemaking.¹⁰⁸ The Commission has explained that “[b]y limiting the

¹⁰⁴ *Administration of the North American Numbering Plan*, Order, 20 FCC Rcd 2957, 2963 ¶ 11 (2005) (“*SBCIS Waiver Order*”) (waiver enabling voice-over Internet Protocol (“VoIP”) provider to obtain numbering resources directly from the North American Numbering Plan Administrator pending outcome of rulemaking addressing IP-enabled service provider access to numbering resources). See also *Nat’l Exchange Carrier Ass’n Petition to Amend Section 69.104 of the Commission’s Rules*, Order Granting Petition for Rulemaking, Notice of Proposed Rulemaking, and Order Granting Interim Partial Waiver, 19 FCC Rcd 13591, 13606-07 ¶ 45 & n.116 (2004) (“*NECA Waiver Order*”) (“Grant of a waiver pending the result of a rulemaking proceeding is consistent with Commission precedent;” granting waiver of rule prescribing assessment of subscriber line charges on certain T-1 services pending outcome of rulemaking reviewing same rule).

¹⁰⁵ *SBCIS Waiver Order*, 20 FCC Rcd at 2960 ¶ 6.

¹⁰⁶ *Id.* at 2959 ¶ 4.

¹⁰⁷ *NECA Waiver Order*, 19 FCC Rcd at 13607 ¶ 45.

¹⁰⁸ *Pacific Telesis Petition for Exemption from Customer Proprietary Network Information Notification Requirements*, Order, 12 FCC Rcd 15134, 15140 ¶ 12 (CCB 1996) (“*Pacific Telesis Waiver*”).

waiver's duration, we require parties ultimately to establish that a rule change is warranted in order to obtain long-term relief."¹⁰⁹

In the *Verizon Advanced Services Waiver*, the Commission expressly accepted Verizon's argument that "the relief . . . request[ed] here 'is also only interim in nature. There are other ongoing . . . proceedings to determine how these and other broadband services will be treated going forward.'"¹¹⁰ The Commission concluded that "our grant of a waiver . . . is not intended . . . to detract from a full and fair consideration of whether advanced services should receive broader 'non-dominant' regulatory treatment in the future."¹¹¹ The *Qwest Advanced Services Waiver* also noted that "the grant of the waiver to . . . Verizon . . . was interim in nature and did not prejudice broader issues related to the regulatory treatment of advanced services. Similarly, our decision here does not prejudice the full and fair consideration of these issues in the ongoing proceedings."¹¹²

The *Advanced Services Waiver Orders* compel interim waiver relief in the parallel circumstances presented here. The Commission can still "determine how . . . broadband services will be treated going forward" and whether they "should receive broader 'non-dominant'

¹⁰⁹ *NECA Waiver Order*, 19 FCC Rcd at 13606-07 ¶ 45. See also *Paxson Communications Corp. (Assignor) and Clear Channel Metroplex Licenses, Inc. (Assignee)*, Memorandum Opinion and Order, 12 FCC Rcd 19583, 19591-92 ¶ 22 (MMB 1997) (temporary waiver of one-to-a-market rule granted conditioned on outcome of media ownership rulemaking proceedings); *Pacific Telesis Waiver*, 12 FCC Rcd at 15139-40 ¶¶ 9-12 (granting temporary waiver of customer proprietary network information ("CPNI") notification requirements pending resolution of CPNI rulemaking).

¹¹⁰ *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16848 ¶ 14 (citation omitted).

¹¹¹ *Id.*

¹¹² *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7484 ¶ 4.

regulatory treatment in the future” in “other ongoing . . . proceedings.”¹¹³ One of the “ongoing . . . proceedings” cited in the *Advanced Services Waiver Orders*,¹¹⁴ is the still pending *LEC Broadband Proceeding*, in which the Commission requested comments on the “appropriate regulatory requirements for [ILECs’] provision of domestic broadband telecommunications services,” including whether broadband services used by businesses should continue to be subject to dominant carrier regulation.¹¹⁵ Although the Commission has never completed that docket -- while most of the industry has been excused from dominant carrier regulation in individual proceedings -- the Commission could determine in that or other proceedings whether, and to what extent, dominant carrier regulation should be applied to ILEC enterprise broadband services.¹¹⁶

Thus, there is no need to resolve “arguments regarding the competitive nature of the [enterprise broadband] market in this [waiver] proceeding, as such a complex analysis is better suited to . . . proceedings . . . where . . . such issues are already clearly before the Commission.”¹¹⁷ As in the *Advanced Services Waiver Orders*, the waiver sought by CenturyLink

¹¹³ *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16848 ¶ 14.

¹¹⁴ *Id.*; *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7484 ¶ 4.

¹¹⁵ *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745, 22746 ¶ 1, 22766 ¶¶ 41-42, 22768-69 ¶ 47 (2001) (“*LEC Broadband Proceeding*”).

¹¹⁶ Another “ongoing” proceeding addressing the regulatory treatment of advanced services cited in the *Advanced Services Waiver Orders* was the *Special Access NPRM*. See *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16848 ¶ 14; *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7484 ¶ 4. The more recently filed Petition of Ad Hoc Telecommunications Users Committee, *et al.* to Reverse Forbearance from Dominant Carrier Regulation of Incumbent LECs’ Non-TDM-Based Special Access Services, WC Docket No. 05-25, RM-10593 (filed Nov. 2, 2012), also focuses on the regulation of enterprise broadband services.

¹¹⁷ *Verizon Advanced Services Waiver*, 20 FCC Rcd at 16848 ¶ 14.

is “interim in nature and [does] not prejudge” “the full and fair consideration of these” “broader issues related to the regulatory treatment of [enterprise broadband] services.”¹¹⁸

An interim waiver is particularly appropriate where, as in this matter, the regulations sought to be waived impose costs and other burdens that ultimately might not have to be borne upon a more complete review of the regulations’ applicability. In order to address “customer inconvenience” resulting from application of the Commission’s structural separation rules to network channel terminating equipment (“NCTE”), the Commission affirmed “interim waivers” of those rules granted to three Bell Operating Companies (“BOCs”) to allow them to provide NCTE on an unseparated basis -- as previously permitted for legacy AT&T, independent telephone companies and non-carriers -- pending “resolution of the more fundamental” issues regarding BOC provision of NCTE in a rulemaking.¹¹⁹ The Commission noted that the waivers did not “foreclose our consideration of any of the” rulemaking issues.¹²⁰ Similarly, an interim waiver of dominant carrier regulation would address the customer inconvenience and frustration resulting from CenturyLink’s inability to provide the customized nationwide enterprise broadband offerings on a streamlined basis that all of its competitors do, thereby putting it in the

¹¹⁸ *Qwest Advanced Services Waiver*, 22 FCC Rcd at 7484 ¶ 4. See also *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Memorandum Opinion and Order, 10 FCC Rcd 5490, 5490 ¶ 4, 5491 ¶¶ 6, 9 (CCB 1995) (“temporary waiver” of payphone compensation rules -- similar to prior waiver for AT&T -- granted to Sprint in order to allow it to pay per-call compensation “pending further [Commission] action . . . regarding the appropriate permanent compensation mechanism”).

¹¹⁹ *American Information Technologies, Inc.*, Memorandum Opinion and Order, 1 FCC Rcd 150, 150 ¶ 1, 152 ¶¶ 22-24 & n.27 (1986).

¹²⁰ *Id.* at 152 ¶ 22.

same position as AT&T and other ILECS pending “resolution of the more fundamental” issues regarding the appropriate regulatory treatment of ILEC enterprise broadband services.¹²¹

In the *Puerto Rico Waiver Order*, the Wireline Competition Bureau (“Bureau”) granted an interim waiver of dominant carrier regulation of the in-region interstate and international long distance services provided on an unseparated basis by the Puerto Rico Telephone Company, Inc. (“PRT”) pending review of PRT’s request for nondominant treatment of those services upon a more complete record.¹²² The Bureau explained that “[w]hile we are not prejudging PRT’s ability to demonstrate that it lacks market power and should be classified as nondominant, we find that it is in the public interest to give PRT a further opportunity to make such a showing. Regulations associated with dominant carriers impose costs and administrative burdens on carriers and the Commission.”¹²³ Accordingly, “[g]iven the impact that a decrease in PRT’s operational efficiency may have on efforts to maintain and increase telephone subscribership . . . it does not serve the public interest to impose these costs and burdens if we may soon conclude that they ultimately will not be applicable.”¹²⁴

The Bureau granted PRT an interim waiver of dominant carrier regulation for 90 days in order to allow PRT to file further evidence in support of its claim of nondominance within that period and, assuming PRT met that deadline, “the deferral will continue for one additional year or until the Commission addresses PRT’s supplemental submission, whichever occurs earlier.”¹²⁵

¹²¹ *Id.*

¹²² *Puerto Rico Waiver Order*, 25 FCC Rcd at 17713-14 ¶¶ 20-21.

¹²³ *Id.* at 17713 ¶ 20.

¹²⁴ *Id.* at 17713-14 ¶ 20.

¹²⁵ *Id.* at 17714 ¶ 21.

Thus, no showing of nondominance or a lack of market power was necessary in order to grant PRT an interim waiver of dominant carrier regulation.¹²⁶ PRT's waiver has been extended twice since then, most recently "so the Commission can consider the related issues raised in the USTelecom Petition" and PRT's nondominance request "in a coordinated manner."¹²⁷

Similarly, an interim waiver of dominant carrier regulation of CenturyLink's enterprise broadband services would remove the "costs and administrative burdens on carriers and the Commission" of "[r]egulations associated with dominant carriers."¹²⁸ As detailed above, those "costs and administrative burdens" have weighed heavily on CenturyLink's ability to compete for large customers demanding individually tailored enterprise broadband offerings. "[I]t does not serve the public interest to impose these costs and burdens if [the Commission] may soon conclude that they ultimately will not be applicable."¹²⁹

Given the increase in competition in enterprise broadband services since the *Enterprise Broadband Forbearance Orders*, the Commission "may" very well "conclude" in other

¹²⁶ See *id.* at 17713 ¶¶ 19-20 ("PRT appears to recognize that it will need to provide additional information . . . before the Commission can conclude that PRT lacks market power." "[I]t is in the public interest to give PRT a further opportunity to make such a showing.").

¹²⁷ *Puerto Rico Waiver Extension*, 28 FCC Rcd at 1074 ¶ 5. The USTelecom Petition referred to by the Bureau was the Petition of US Telecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61 (filed Feb. 16, 2012). Subsequently, in granting the USTelecom Petition, the Commission clarified that LEC long distance services, including PRT's long distance services, were previously classified as nondominant, thereby mooted PRT's nondominance request. See *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7695-7700 ¶¶ 154-62 (2013).

¹²⁸ *Puerto Rico Waiver Order*, 25 FCC Rcd at 17713-14 ¶ 20.

¹²⁹ *Id.*

proceedings that its approach in the *Enterprise Broadband Forbearance Orders* is still valid and “that [dominant carrier regulation] ultimately will not be applicable” to any enterprise broadband services.¹³⁰ Accordingly, an interim waiver is appropriate until the Commission resolves this industry-wide regulatory issue “so the Commission can consider the related issues raised in [other proceedings],” including the regulatory treatment of CenturyLink’s enterprise broadband services “in a coordinated manner.”¹³¹

D. The Commission Has Authority to Grant an Interim Waiver of CenturyLink’s Tariffing Obligations

Because the waiver sought here is for interim relief pending the outcome of other proceedings, the Commission has the authority to include an interim waiver of the tariffing requirements of Section 203(a) of the Act for CenturyLink’s enterprise broadband services. “[S]ubstantial deference by courts is accorded to an agency when the issue concerns interim relief.”¹³² In *MCI Telecomms.*, the D.C. Circuit rejected a constitutional challenge predicated on the Supreme Court’s *Smith*¹³³ decision to an interim jurisdictional cost separation formula, noting that “[t]he *Smith* court was not considering the constitutionality of an *interim* ratemaking solution.”¹³⁴ In *CompTel*, the court upheld an interim access charge against a statutory challenge that it violated the Act’s cost-based rate mandate, explaining that “[w]e do not think it contrary to the Act to institute [interim access charges], even though such charges on their face appear to

¹³⁰ *Id.*

¹³¹ *Puerto Rico Waiver Extension*, 28 FCC Rcd at 1074 ¶ 5.

¹³² *MCI Telecomms. Corp. v. FCC*, 750 F.2d 135, 140 (D.C. Cir. 1984) (“*MCI Telecomms.*”).

¹³³ *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133 (1930).

¹³⁴ *MCI Telecomms.*, 750 F.2d at 141 (emphasis in original).

violate the statute, in order to effectuate another part of the Act.”¹³⁵ Thus, the Commission’s statutory authority is at its zenith when taking interim measures.¹³⁶

An interim waiver of tariffing obligations would similarly be granted “substantial deference.”¹³⁷ Prior to the passage of the Telecommunications Act of 1996, the courts had overturned the Commission’s attempt in its *Competitive Carrier* rulemaking to eliminate permanently the tariffing requirement for all nondominant carriers.¹³⁸ The Commission had acted under the tariff modification authority in Section 203(b)(2) of the Act.¹³⁹ The courts held, however, that modification as contemplated by Section 203(b)(2) “suggest[s] circumscribed alterations -- not, as the FCC now would have it, wholesale abandonment or elimination of a requirement.”¹⁴⁰

¹³⁵ *Competitive Telecomms. Ass’n v. FCC*, 117 F.3d 1068, 1074 (8th Cir. 1997) (“*CompTel*”).

¹³⁶ See also *Rural Cellular Ass’n v. FCC*, 685 F.3d 1083, 1095 (D. C. Cir. 2012) (“temporary measure[s] . . . ‘should be given “substantial deference”” (citations omitted); *Competitive Telecomms. Ass’n v. FCC*, 309 F.3d 8, 16 (D.C. Cir. 2002) (that the Commission “has only issued an interim rule while it further studies the issues,” “combined with the other rationales in this case . . . constitutes adequate justification for the rule.”).

¹³⁷ *MCI Telecomms.*, 750 F.2d at 140.

¹³⁸ See *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Fourth Report and Order, 95 FCC 2d 554 (1983), vacated *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), cert. denied *MCI Telecomms. Corp. v. AT&T*, 509 U.S. 913 (1993); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Sixth Report and Order, 99 FCC 2d 1020 (1985), vacated *MCI Telecomms. Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985).

¹³⁹ 47 U.S.C. § 203(b)(2) (“[t]he Commission may . . . modify any [Section 203] requirement . . . either in particular instances or by general order applicable to special circumstances or conditions.”).

¹⁴⁰ See, e.g., *MCI Telecomms. Corp. v. FCC*, 765 F.2d 1186, 1192 (D.C. Cir. 1985) (citation omitted).

Reviewing a subsequent Commission order addressing the tariff-filing requirement, the Supreme Court, in *MCI v. AT&T*, reaffirmed the lower courts' holdings that Section 203(b)(2) does not authorize the complete "elimination" of the tariffing obligation for a large portion of the long distance market.¹⁴¹ The Court noted, however, that:

We do not mean to suggest that the tariff-filing requirement is so inviolate that the Commission's existing modification authority does not reach it at all. Certainly the Commission can modify the form, contents, and location of required filings, and *can defer filing or perhaps even waive it altogether in limited circumstances.*¹⁴²

CenturyLink's status as the last major national provider of increasingly competitive enterprise broadband services still burdened by dominant carrier regulation clearly qualifies as an example of the "limited circumstances" under which tariffing should be "defer[red]" or "waive[d] . . . altogether" under *MCI v. AT&T*, at least on an interim basis.¹⁴³

This reading of *MCI v. AT&T* is strongly supported by the *Puerto Rico Waiver Order*, discussed above. In granting PRT an interim waiver of dominant carrier regulation, the Bureau also "modif[ied]," pursuant to Section 203(b)(2), Section 203(c)'s prohibition against untariffed service and "temporarily waive[d]" the Commission's parallel rule, citing *MCI v. AT&T*.¹⁴⁴ The Bureau temporarily deferred the tariffing requirement for the same period as the interim waiver of dominant carrier regulation.¹⁴⁵ The temporary tariff deferral was extended twice, along with

¹⁴¹ *MCI v. AT&T*, 512 U.S. at 231.

¹⁴² *Id.* at 234 (emphasis added).

¹⁴³ *Id.*

¹⁴⁴ *Puerto Rico Waiver Order*, 25 FCC Rcd at 17714-15 ¶ 22 & n.76.

¹⁴⁵ *Id.* at 17715 ¶ 23. The Bureau also based its deferral on Section 203(a), which permits the Commission to "designate" the "reasonable time" within which a carrier must file a tariff. *Id.* (quoting 47 U.S.C. § 203(a)).

the deferrals of dominant carrier regulation discussed above.¹⁴⁶ Similarly, the Commission has the authority to waive CenturyLink's enterprise broadband tariffing obligations temporarily until it resolves the regulatory status of ILEC enterprise broadband services on a permanent, industry-wide basis in other proceedings.

IV. CONCLUSION

In the event that the Commission does not grant CenturyLink's simultaneously filed Petition for Forbearance, the Commission, in the alternative, should grant an interim waiver of its dominant carrier regulations and the *Computer Inquiry* tariffing requirement with regard to CenturyLink's enterprise broadband services pending the Commission's ultimate determination as to the regulatory treatment of those services on an industry-wide basis. The requested relief would enable CenturyLink to respond more effectively to competition by offering competitively priced arrangements individually tailored to the needs of large enterprise customers, thereby removing the current regulatory imbalance in that highly competitive market. The resulting

¹⁴⁶ *Puerto Rico Waiver Extension*, 28 FCC Rcd at 1074 ¶ 5. PRT's tariffing obligation thus was deferred a total of almost two and a half years under these orders. The *Puerto Rico Waiver Order* was released on December 23, 2010, 25 FCC Rcd 17704, and the *Puerto Rico Waiver Extension* continued the waiver until May 17, 2013, 28 FCC Rcd at 1072 ¶ 1.

regulatory parity and public interest benefits more than satisfy the “good cause” requirement for waiver relief as well as the APA’s requirement that similarly situated parties be treated alike.

Respectfully submitted,

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Attachment A

Services for which CenturyLink Is Seeking Waiver

LEGACY CENTURYTEL

Category	Service Description
Ethernet	<ul style="list-style-type: none"> • <u>Ethernet Private Line (EPL)</u>: EPL is an Ethernet-based service that provides high-speed point-to-point connectivity. Available in port speeds starting at 10Mbps. • <u>Ethernet Virtual Private Line (EVPL)</u>: EVPL is an Ethernet-based service that provides high-speed multi-point and Local Area Network (LAN) connectivity. Available in port speeds starting at 10 Mbps.
Synchronous Optical Network (SONET)	<ul style="list-style-type: none"> • <u>Local Transport – Synchronous Optical Channel (Local Transport)</u>: Local Transport provides a two-way voice- frequency transmission path permitting the transport of calls in the originating direction and in the terminating direction, but not simultaneously. Available in speeds starting at OC-3. • <u>Synchronous Optical Channel Services (SOCS)</u>: SOCS provides dedicated transport utilizing SONET transmission standards. Available in speeds starting at OC-3. • <u>Custom Connect</u>: Custom Connect provides a connection to the Optical Network and a customer's designated premises. Available in speeds starting at OC-3.
Video Transmission	<ul style="list-style-type: none"> • <u>Video Transmission</u>: Video Transmission provides one-way transmission capability to deliver a video signal. Available in speeds starting at 19.4 Mbps.
Wave	<ul style="list-style-type: none"> • <u>Wave</u>: Wave is a long-haul wavelength service utilizing Wavelength Division Multiplexing (WDM) technology. It is a high-speed, multi-protocol data transport service enabling two or more optical signals having different wavelengths simultaneously transmitted in the same direction over one strand of fiber. Available in speeds starting at 2.5 Gbps.
Frame Relay	<ul style="list-style-type: none"> • <u>Frame Relay</u>: Frame Relay is a connection-oriented, packet-switched data service that allows for the interconnection of LAN or other compatible end user customer premises equipment.
Asynchronous Transfer Mode (ATM)	<ul style="list-style-type: none"> • <u>ATM</u>: ATM is a connection-oriented network service used to transport bandwidth intensive data, voice and video applications among multiple locations.

LEGACY EMBARQ

Category	Service Description
Ethernet	<ul style="list-style-type: none">• <i>Ethernet Virtual Private Line (EVPL)</i>: EVPL is an Ethernet-based service that provides high-speed multi-point and Local Area Network (LAN) connectivity. Available in port speeds starting at 10 Mbps.
Video Transmission	<ul style="list-style-type: none">• <i>Video Transmission</i>: Video Transmission provides one-way transmission capability to deliver a video signal. Available in speeds starting at 19.4 Mbps.
Wave	<ul style="list-style-type: none">• <i>Wave</i>: Wave is a long-haul wavelength service utilizing Wavelength Division Multiplexing (WDM) technology. It is a high-speed, multi-protocol data transport service enabling two or more optical signals having different wavelengths simultaneously transmitted in the same direction over one strand of fiber. Available in speeds starting at 2.5 Gbps.