

May 19, 2017

**VIA ELECTRONIC MAIL & OVERNIGHT MAIL**

Irene Kim Asbury, Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3rd Floor, Suite 314  
Trenton, NJ 08625

Re: I/M/O Joint Petition of Level 3 Communications, Inc., Together with CenturyLink, Inc. for Approval of Indirect Transfer of Control of: Level 3 Communications, LLC, Level 3 Telecom of New Jersey, LP, Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., TelCove Operations, LLC and WilTel Communications, LLC to CenturyLink, Inc. and Related Approvals BPU Docket No. TM16121159

Dear Secretary Asbury:

On behalf of CenturyLink, Inc. and Level 3 Communications, Inc., Joint Petitioners in the above-referenced matter, enclosed please find Reply Comments to the Comments filed by the Division of Rate Counsel on April 20, 2017.

Should you have any questions, please feel free to contact me.

Respectfully submitted,



Colleen Foley, Esquire

cc: All Parties on the Attached Service List *(via electronic mail only)*

## SERVICE LIST

In the Matter of the Joint Petition of Level 3 Communications, Inc., together with CenturyLink, Inc. for Approval of Indirect Transfer of Control of: Level 3 Communications, LLC, Level 3 Telecom of New Jersey, LP, Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., Telcove Operations, LLC, and WiTel Communications, LLC to CenturyLink, Inc. and Related Approvals  
BPU Docket No. TM16121159

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**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

*I/M/O* Joint Petition of Level 3 Communications, Inc., :  
Together with CenturyLink, Inc. for Approval of Indirect :  
Transfer of Control of: Level 3 Communications, LLC, : BPU Docket No. TM16121159  
Level 3 Telecom of New Jersey, LP, Broadwing :  
Communications, LLC, Global Crossing Local :  
Services, Inc., Global Crossing Telecommunications, Inc., :  
TelCove Operations, LLC and WilTel Communications, :  
LLC to CenturyLink, Inc. and Related Approvals :

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**REPLY COMMENTS OF JOINT PETITIONERS**

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**I. Introduction**

On December 15, 2016, Level 3 Communications, Inc. (“Level 3”) and CenturyLink, Inc. (“CenturyLink”) (together “Joint Petitioners”) filed a Joint Petition requesting approval by the New Jersey Board of Public Utilities (“Board” or “BPU”) of the indirect transfer of control of Level 3 Communications, LLC, Level 3 Telecom of New Jersey, LP, Broadwing Communications, LLC, Global Crossing Local Service, Inc., Global Crossing Telecommunications, Inc., TelCove Operations, LLC, and WilTel Communications, LLC (collectively, “Level 3 OpCos”) to CenturyLink (hereinafter “Transaction”).<sup>1</sup> Since filing, Joint Petitioners have responded to multiple rounds of discovery propounded by the Division of Rate Counsel (“Rate Counsel” or “Division of Rate Counsel”), as well as numerous data requests propounded by the Staff of the Board. Joint Petitioners timely responded to all discovery requests.

On April 20, 2017, Rate Counsel filed Comments (“Comments”) in which Rate Counsel stated that it “generally supports” approval of the proposed Transaction, but also included several

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<sup>1</sup> On March 16, 2017, Joint Petitioners filed an amendment to the Joint Petition.

recommended conditions.<sup>2</sup> Rate Counsel's proposed conditions can be categorized in four (4) general areas:

- (1) Broadband commitments (with numerous specific proposals);
- (2) Competition;
- (3) Service quality; and
- (4) Pension & Employment

As demonstrated by the Joint Petition and discussed more thoroughly below, the proposed Transaction is in the public interest and will benefit the state of New Jersey in terms of the financial strength of the combined company and its strength as a competitor in the enterprise market. Rate Counsel's proposed conditions are not necessary to find the proposed Transaction is in the public interest, and Rate Counsel has failed to show how the claimed benefits of implementing its proposed commitments outweigh the significant costs of those proposals. The proposed conditions would lead to regulation of products outside the jurisdiction of the Board, including broadband deployment, broadband speeds, and pricing, and impose restrictions on locations beyond the Board's authority. No New Jersey competitor to CenturyLink or Level 3 has intervened in this proceeding, and Rate Counsel has provided no proof of harm to competition to warrant any competition conditions. Further, there has been no demonstration by Rate Counsel that the Board's service quality regulations are inadequate or that CenturyLink has failed to comply with those existing Board regulations. Rate Counsel has also failed to demonstrate why an employment condition is required given the combined size of CenturyLink and Level 3 relative to Verizon/XO in New Jersey and that the combined company would have no reason to eliminate any jobs where doing so would degrade its services or network quality. Moreover, Rate Counsel has failed to justify, or even explain, why it has recommended

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<sup>2</sup> Comments at p. 22.

conditions to this proposed merger that far exceed those Rate Counsel recommended in the Verizon/XO matter—a transaction that involved the dominant New Jersey ILEC.

Joint Petitioners have consistently stated in pleadings and discovery responses and reiterate in this filing that the proposed Transaction will not affect employee pension benefits and all employees will retain the ability to utilize a 401K plan. Rate Counsel has not alleged an inability to fulfill the pension obligations. Joint Petitioners therefore maintain that *N.J.S.A. 48:3-7(a)* and *N.J.S.A. 48:3-10* are not impacted and no condition is required for assurance of 401K plan access.

For these reasons, the Board should reject the conditions proposed by Rate Counsel and issue an order approving the proposed Transaction.

The Transaction is expected to close by September 30, 2017. Joint Petitioners request that the Board review and approve the proposed Transaction at its public agenda meeting scheduled for June 30, 2017, to enable the parties to complete the arrangements necessary for closing by the September deadline.

## **II. Affirmative benefits of the proposed Transaction flow to all customers.**

The proposed Transaction is in the public interest as it will provide positive benefits to customers in both the enterprise and mass markets.<sup>3</sup> Enterprise customers typically require the most modern, highest-capacity products and services, as well as global connectivity. Smaller businesses and consumers are typically fast-followers and in need of similar connectivity, capacity, security, and reliability. The combined company will be better positioned to provide

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<sup>3</sup> The Board has routinely defined the relevant telecommunications markets in New Jersey by dividing them between enterprise and mass market customers throughout the State. *In the Matter of the Joint Petition of Verizon Communications Inc. and MCI, Inc. for Approval of Merger*, Docket No. TM05030189, 2006 N.J. LEXIS 179, Order dated April 12, 2006. Rate Counsel does not appear to dispute the positive benefits of the Transaction relative to either enterprise customers or the enterprise market.

more enhanced, robust and diverse services to both mass market and enterprise market customers than either CenturyLink or Level 3 could on its own.

The combined company will have access to an expansive national and international network, increased bandwidth capacity and additional managed services. As addressed in Section III, such a network associated with the enterprise business segment is a leading indicator—an accelerator—to the evolution of the network to meet the future needs of all customers. All customers of the combined company affirmatively benefit because a stronger combined company can continue to invest in, and further improve, broadband networks and deployment speeds for both business and consumer customers, along with a broader range of services and solutions. Combining the two companies therefore will improve capabilities that are sought today and in the future by all network users.

Service providers with the greatest network reach have the best prospects for competing for multi-location customers.<sup>4</sup> The proposed Transaction will enhance combined network facilities, bolster the ability to compete for multi-location customers, and thereby affirmatively benefit any such business customers in CenturyLink's service territory. Use of on-net facilities also will enable the combined company to compete more efficiently and will facilitate better quality control for customers.

In sum, enterprise and mass market customers alike will substantially and affirmatively benefit from the proposed Transaction. The proposed Transaction creates a combined company that is positioned to create a more stable, growth-oriented service provider with the financial wherewithal to compete with larger, better-capitalized competitors in enterprise markets in New Jersey, the nation, and globally.

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<sup>4</sup> Response to Staff OCTV&T 5.

### III. Rate Counsel's claims of "speculative" benefits and "adverse impact" are without merit or support.

Rate Counsel supports approval of the merger.<sup>5</sup> Rate Counsel claims without foundation, however, that the benefits from the Transaction are "speculative," and the combined company's "focus on enterprise customers may jeopardize the quality and variety of services offered to residential and small business customers."<sup>6</sup> Based upon this speculation, Rate Counsel suggests numerous cumbersome and costly recommendations "or similar Board measures" purportedly to minimize "any potential adverse impact to New Jersey ratepayers."<sup>7</sup>

Rate Counsel's claims of risk to residential and small business customers are without any support or merit.<sup>8</sup> First, Rate Counsel relies upon an October 2016 CenturyLink presentation to investors and asserts that the merger shifts the combined companies' mix of revenue further toward enterprise services (shifting from 64% pre-merger to 76% post-merger) and jeopardizes services to residential and small business customers (with 36% residential pre-merger and 24% residential post-merger).<sup>9</sup> Rate Counsel fails to recognize that the growth in enterprise services will also benefit the residential and small business customer class. By moving toward growth businesses, the merged company will be more capable of achieving growth in both revenue and

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<sup>5</sup> Comments at pp. 21-22.

<sup>6</sup> *Id.*, at p. 22.

<sup>7</sup> *Id.*

<sup>8</sup> To the extent Rate Counsel contends that positive benefits must flow *to specific customer segments* under the New Jersey change of control statutes, regulations, and case law, Petitioners disagree. While the Board's regulation includes a requirement for positive benefits, it clearly does not require a demonstration that such benefits accrue to specific customer segments: "The Board shall not approve a merger, consolidation, acquisition and/or change in control unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1." N.J.A.C. 14:1-5.14(c). See, also, e.g. *In re Teleport Communications New York et al.*, Order, Docket No. TM14030234 (April 24, 2014), 2014 N.J. PUC Lexis 34, (Board approved merger of AT&T Inc. subsidiaries finding in general "that positive benefits will flow to customers ... as the transaction will result in a more streamlined corporate structure that will enable AT&T Inc. ... to more efficiently achieve potential operational, administrative, and strategic objectives.") [\*7].

<sup>9</sup> Comments at p. 2 ("The risks of the proposed transaction arise because the line of business that concerns New Jersey's residential and small business customers diminishes in relative scale with each expansion by the parent company into other states, countries, and lines of business.").

Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA), which means the combined company becomes financially stronger over the long term, increasing investment in the network and furthering product development *thus tangibly benefitting all customers*, employees and communities served, including those in New Jersey.

Second, Rate Counsel's proposed conditions would dilute and/or undermine the affirmative benefits of the Transaction if mandated by the Board. The network associated with the enterprise business segment is a leading indicator of the evolution of the network to meet the future needs of *all* customers of CenturyLink and Level 3. Enterprise customers typically require the most modern, highest-capacity products and services, as well as global connectivity. As noted above, smaller businesses and consumers are typically fast-followers and in need of similar connectivity, capacity, security, and reliability. Combining the two companies will improve capabilities that are sought today and in the future by all network users, thus providing substantial affirmative benefits to all customers. Rate Counsel's resort to "historic guaranteed rate of return"<sup>10</sup> as somehow justifying Rate Counsel's proposed conditions is unwarranted as the benefits of the Transaction flow to all customers in the long term. Moreover, CenturyLink would note that no utility, and certainly not CenturyLink, has a "guaranteed rate of return." Additionally, alternative regulation plans approved by the Board for CenturyLink make historic regulatory constructs irrelevant to the matters at issue in this proceeding.

Third, there will be no risk to CenturyLink's New Jersey ILEC because the proposed Transaction is *additive to CenturyLink's existing non-ILEC operations*. CenturyLink is responsibly evolving its business during these changing times to better assure that the combined company will be a more cost-effective and viable competitor over the long term. The proposed Transaction aligns CenturyLink's competitive business with growth opportunities – data and

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<sup>10</sup> Comments at p. 16.



enterprise – while CenturyLink’s ILEC continues to serve customers and the public interest in low-density, high-cost areas.

Rate Counsel’s underlying assumption on this point – i.e., that the combined company will be unable to both grow *and* continue to serve residential and business customers – remains utterly unfounded. That “either/or” view of enterprise markets or residential and small business markets ignores Joint Petitioners’ respective histories of successfully integrating acquisitions while continuing to serve multiple customer segments.<sup>11</sup> CenturyLink and its predecessors in New Jersey have maintained quality service *for all customers before, during and after those prior mergers*. Indeed, CenturyLink’s most recent merger involving a change of control requiring Board approval concerned Qwest’s IXC and CLEC affiliates in New Jersey. That transaction was additive to CenturyLink’s existing non-ILEC operations in New Jersey and did not create risk to “the quality and variety of services” for CenturyLink’s ILEC residential and small business customers.

CenturyLink and Level 3 each have proven track records of successfully integrating the businesses they acquire.<sup>12</sup> The planned integration for this Transaction will combine the best managerial and technical talent from both companies. Adopting the best operational practices from the merging companies will further enhance the already strong customer-centric commitment of the combined company – not just for enterprise customers, but for all customers.

Fourth, the facts and structure of the Transaction demonstrate that conditions are not warranted. The Transaction will not affect any of CenturyLink’s existing regulatory obligations in New Jersey relative to the residential and small business customers it serves.<sup>13</sup> The

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<sup>11</sup> Rate Counsel merely notes CenturyLink’s prior mergers, but fails to recognize the import and success of prior mergers. Comments at footnote 3.

<sup>12</sup> Joint Petition at ¶34.

<sup>13</sup> *Id.* at ¶¶ 27, 28.

Transaction in fact does not involve a change of control of the two New Jersey certificated affiliates of CenturyLink and thereby will not impact the service and rates, or the regulatory obligations, of the New Jersey certificated affiliates of CenturyLink.<sup>14</sup>

Moreover, financing to consummate the Transaction will *not* be secured with guarantees from CenturyLink's regulated ILECs, nor will CenturyLink pledge regulated ILEC operations or assets. On March 16, 2017, Petitioners amended the Joint Petition and notified the Board that CenturyLink Communications, LLC – which is certificated by the Board as an IXC and CLEC – also will not be a guarantor of *any* debt obligations underlying the proposed Transaction. Therefore, *none* of the New Jersey regulated entities involved in the Transaction are participating as co-borrowers, guarantors or issuers of security interests in regulated assets. Accordingly, Rate Counsel's contention that residential customers of CenturyLink might possibly be financially "neglected" is without support and meritless.<sup>15</sup>

Finally, not only has Rate Counsel failed to demonstrate its purported risks of the Transaction, Rate Counsel has failed to show how the claimed benefits of implementing its proposed commitments outweigh the significant costs of those proposals. The conditions sought by Rate Counsel in this Transaction would be costly to implement, particularly the proposals to increase broadband deployment and speeds while reducing broadband pricing. There has been no discussion let alone demonstration on the value of undertaking Rate Counsel's proposed conditions. The public interest is not benefitted by imposing costly and unnecessary conditions as sought by Rate Counsel relative to CenturyLink.

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<sup>14</sup> *Id.* at ¶¶ 1, 6. Only Level 3 and its subsidiaries, including the Level 3 OpCos, are undergoing a change of control. The Level 3 OpCos, none of which are ILECs, already compete amongst myriad IXC and CLEC participants in New Jersey.

<sup>15</sup> *See*, Comments at p. 15 (“[T]he heightened focus on enterprise customers will divert managerial attention and company investment, potentially leaving residential customers neglected.”)

New Jersey residential and small business customers of CenturyLink do not bear any risks associated with the Transaction. Rate Counsel's claims of risk are speculative, meritless and should be dismissed.

#### **IV. The Board Should Reject Rate Counsel's Specific Recommendations.**

##### **A. Broadband**

###### **1. Introduction.**

Approximately one third of Rate Counsel's Comments are devoted to retail broadband deployment, subscribership, speeds, and pricing of such services provided by CenturyLink's ILEC in New Jersey.<sup>16</sup> The Transaction does not involve CenturyLink's ILEC, and retail broadband services are not relevant to the statutory criteria required by the Board to review the Transaction. More importantly, the Board does not have authority to regulate broadband deployment, broadband speeds, and pricing. Nonetheless, Rate Counsel proposes that the Board require CenturyLink to provide "detailed plans and time tables" regarding "improvements" to broadband buildout, broadband speeds, and pricing as follows:

1. Improvement and expansion of Petitioner's residential broadband infrastructure and deployment plans throughout the service territory.
2. Improvement on broadband speeds and service tier price offerings for residential customers throughout the service territory and throughout anchor institutions such as hospitals, schools, libraries, etc.
3. Provision of information on an annual basis to monitor broadband adoption among residential and business customers.

At the heart of Rate Counsel's broadband proposals is the same skewed view as addressed in Section III above that a focus on growth-oriented enterprise markets will reduce the

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<sup>16</sup> Comments at pp. 8-16.

combined companies' focus on smaller customer segments.<sup>17</sup> This flawed and unsupported assumption is meritless. Rate Counsel's proposed broadband conditions are wrong for New Jersey consumers and are not in the public interest.

**2. Rate Counsel's broadband deployment data points are unreliable and its various broadband proposals are unnecessary, particularly given market forces and the FCC's CAF program.**

Rate Counsel's claims regarding CenturyLink's broadband deployment in New Jersey are misleading.<sup>18</sup> Specifically, Rate Counsel asserts that CenturyLink's broadband speeds "are snail-slow, and well below the FCC recommended benchmark for 'advanced telecommunications' of 25 Mbps down, 3 Mbps up."<sup>19</sup> The Board does not have jurisdiction over broadband speed requirements. The FCC does and has exercised jurisdiction through the Connect America Fund ("CAF") programs to fund the targeted expansion of broadband availability, as addressed below. And, the FCC does not require 25 Mbps down, 3 Mbps up speeds as requested by Rate Counsel to be provided under the CAF Phase II program. The Board should dismiss Rate Counsel's attempt to extract concessions in areas far outside the scope of review in this proceeding.

Rate Counsel wrongly seeks to have the Board exert jurisdiction over locations for broadband deployment, as well as requirements for CenturyLink to provision broadband at higher speeds *and* lower rates.<sup>20</sup> Rate Counsel fails to cite to any statute authorizing the unprecedented exercise of Board authority into these areas of broadband deployment, broadband speed levels, *and* pricing. The broadband proposals requested by Rate Counsel are not within the Board's jurisdictional purview and should not be entertained by the Board.

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<sup>17</sup> See, Comments at p. 16 ("Rate Counsel urges the Petitioners to commit to more widespread and faster residential broadband deployment as well as deployment to 'anchor' institutions – schools, libraries, etc. and commit to specific milestones to ensure timely completion of such broadband deployment plans.").

<sup>18</sup> Comments at pp. 8-11.

<sup>19</sup> *Id.*, at p. 9.

<sup>20</sup> Comments at p. 8.

The FCC-required broadband deployment timeline and speeds are part and parcel of the FCC's complex CAF program *and* also part of the factors that CenturyLink had to consider in accepting the CAF obligations in exchange for the funding. Broadband deployment and broadband speeds are matters being addressed on the national level before the FCC – which is the appropriate forum for Rate Counsel to voice its concerns. The exercise of Board jurisdiction as Rate Counsel seeks would alter the balancing of interests in the CAF program and possibly could conflict with the policy objectives of the FCC's CAF program. Rate Counsel's attempt to circumvent that federal process via a state merger proceeding should be recognized and rejected.

Moreover, there has been no demonstration by Rate Counsel that the market for broadband services and higher speeds is deficient. More than 95% of the homes and businesses in CenturyLink's incumbent New Jersey service territory have high speed internet service capability available. The thriving competitive marketplace for broadband services continually drives CenturyLink to increase broadband availability and, in particular, at higher speeds. In fact, five years ago, less than 1% of the homes and businesses in CenturyLink's New Jersey serving area had access to broadband services from CenturyLink at speeds greater than 10 Mbps download, whereas now approximately 50% of those locations have access to broadband with speeds greater than 10 Mbps.

The salient point here is that the market is sufficient to continue the drive to higher speeds desired by consumers. And, where the market is not sufficient, the FCC's CAF program will continue to support those areas where a business case cannot support increased speeds and availability.

Rate Counsel also references confidential information and claims that CenturyLink broadband speeds vary enormously.<sup>21</sup> Wireline broadband technology is distance sensitive and the geographic dimensions and dispersion of end user locations do vary by exchange resulting in variance of capabilities. Merely pointing out variances is not relevant or meaningful. Moreover, Rate Counsel's use of "households" fails to reflect that CenturyLink does not serve all "households" in an area. Some households are served by cable or other intermodal providers or are not willing to take broadband service at all. The bottom line is that the broadband marketplace is competitive and CenturyLink is best positioned to determine how to invest and how to market its broadband services.

Rate Counsel further recommends: (a) annual reporting of residential broadband subscribership by download and upload speeds;<sup>22</sup> and (b) a Board requirement that Petitioners commit to "digital literacy programs" to facilitate broadband adoption.<sup>23</sup> Rate Counsel provides no support whatsoever to show that such efforts lead to "widespread [broadband] adoption" as Rate Counsel vaguely asserts or that CenturyLink should be uniquely required to implement such a program that is not imposed on other providers. The reporting also largely replicates CenturyLink's FCC reporting requirements.<sup>24</sup> There has been no support whatsoever for the assumption that any alleged benefit outweighs the costs to implement, particularly in CenturyLink's relatively limited New Jersey footprint.

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<sup>21</sup> *Id.*, at p. 9.

<sup>22</sup> Comments at pages 14-15.

<sup>23</sup> *Id.*, at p. 14.

<sup>24</sup> Similarly, Rate Counsel implies that consumer demand for broadband exists throughout CenturyLink's territory, but CenturyLink fails to "retain and attract consumers" "relative to cable companies' broadband services." Comments at p. 11. CenturyLink's broadband availability and speed offerings are robust, even while the take rate is low. Rate Counsel's so-called data point of declining broadband subscribership levels is meaningless.

Finally, Rate Counsel recommends “working collaboratively” to identify additional areas for broadband access to anchor institutions, with CenturyLink committing to increasing broadband speeds in such communities.<sup>25</sup> Rate Counsel’s proposal is not workable.

The federal E-rate program rules require competitive procurement. While CenturyLink can bid on competitive opportunities, as a provider CenturyLink cannot commit to give a school or library anything of value that would undermine competitive procurement. CenturyLink also cannot provide financial support or discounts, free service or equipment, or any additional discount or special pricing – whether the product or service is E-rate eligible or not. For this same reason, CenturyLink cannot commit to build at CenturyLink’s expense to connect schools, libraries, etc. Such “anchor institutions” would be ineligible for E-rate funding if receiving any such benefits from CenturyLink, even as part of a voluntary merger commitment.

Accordingly, Rate Counsel’s broadband assertions and various broadband-related proposals are unreliable and misguided. Rate Counsel’s broadband-related comments cannot support a Board order or finding imposing any broadband-related requirements or conditions upon the proposed Transaction.

## **B. Competition**

Rate Counsel claims the proposed Transaction will eliminate a potential and actual competitor in markets for business data services (“BDS”).<sup>26</sup> Per Rate Counsel, where CenturyLink and Level 3 overlap, the merger would diminish competition.<sup>27</sup> Rate Counsel seeks

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<sup>25</sup> Comments at p. 12.

<sup>26</sup> *Id.*, at p. 17.

<sup>27</sup> *Id.*

“clarification” that CenturyLink will “continue to compete in Verizon’s service territory in BDS markets indefinitely, or in the alternative for a minimum period of five years.”<sup>28</sup>

First, Rate Counsel’s comments are moot. On April 28, 2017, the FCC released an Order adopting a competitive market test recognizing the substantial and growing competition for BDS and transport services, and implemented several pricing and other modernizing actions regarding these services.<sup>29</sup> As the FCC noted:

Businesses, non-profits, and government institutions use business data services to enable secure and reliable transfer of data, for example, as a means of connecting to the Internet or the cloud, and to create private or virtual private networks. Business data services support applications that require symmetrical bandwidth, substantial reliability, security, and connected service to more than one location. Business data services are significant to our nation’s economy—revenues reported by providers in response to the *2015 Collection* total almost \$45 billion for 2013, and revenues for the broader market for enterprise services, which include voice, Internet, private network, web-security, cloud connection, and other digital services, could exceed \$75 billion annually. Moreover, these numbers do not capture the indirect contribution of business data services to the nation’s economy as business customers rely on these services for their commercial operations.<sup>30</sup>

Given the competitive BDS and transport marketplace and the FCC’s BDS Order, the proposed Transaction positions the combined companies to be viable participants in the competitive market. Consequently, there is no need for “clarification” that the merged companies will compete in the competitive BDS and transport markets in New Jersey and elsewhere. The Transaction creates a more fortified competitor that, due to the merger, will affirmatively facilitate and thereby benefit competition in the enterprise markets *throughout the State of New Jersey*. Rate Counsel’s BDS claims and request for conditions are clearly mooted.

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<sup>28</sup> Comments at pp. 17-18. *See also*, Comments at p. 22 (Rate Counsel recommends “continued competition and deployment of BDS in Verizon service territory previously served by Level 3.”).

<sup>29</sup> The FCC’s Order can be accessed from the following hyperlink:  
[https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-43A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-43A1.pdf)

<sup>30</sup> *See, In the Matter of Business Data Services in an Internet Protocol Environment, et al*, WC Docket Nos. 16-143 and 05-25, GN Docket No. 13-5 and RM-10593, Report and Order, Rel. April 28, 2017 (FCC 17-43) at para. 6 (footnotes omitted).



Second, Rate Counsel's allegations of "loss of a competitor" and that the "merger would diminish competition" in areas of overlap are assumed rather than demonstrated or supported with any facts or data. Supposition and allegation cannot support a Board order or finding.

No New Jersey CLEC or competitor to CenturyLink or Level 3 has intervened in this proceeding. There is no proof of harm to competition as Rate Counsel claims. The fact is that the Transaction will result in no direct change to the operations of Level 3 OpCos or to Level 3 OpCo's network. The proposed Transaction does not eliminate Level 3 as a competitive entity.

When the Board reviews the pleadings and the facts of the proposed Transaction, two things will become apparent: (1) the enterprise market is competitive today and will be more competitive in the future, as the market is currently served by larger, highly capitalized entities such as Verizon, Comcast, and other entities; and (2) the merger positions the combined company to better compete in the competitive enterprise market, thus facilitating competition in the State.<sup>31</sup>

The primary competitors in the New Jersey enterprise marketplace are AT&T, Verizon, Zayo, Windstream, Comcast, Altice USA (formerly Cablevision), Sunesys and PEG.<sup>32</sup> AT&T and Verizon are the largest players in the nationwide provision of enterprise services and have a global reach that exceeds that of many other competitors. They also have significant financial scale. For example, in their fiscal year 2015, AT&T generated roughly \$30 billion in enterprise revenue,<sup>33</sup> and Verizon generated just under \$20 billion in such revenue.<sup>34</sup> Large cable

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<sup>31</sup> Indeed, the Board less than a year ago approved the merger of Verizon and XO. *In the Matter of the Verified Petition of XO Holdings, XO Communications Services, LLC and Verizon Communications, Inc. for Approval of a Proposed Transaction*, Docket No. TM16030248, Order dated July 29, 2016.

<sup>32</sup> See also, CTL CONFIDENTIAL Exhibit OCTV&T 5, which set forth maps from a third party provider of fiber availability resources and showing locations where numerous companies with long haul and metro fiber throughout New Jersey compete.

<sup>33</sup> See AT&T Inc., Q3 2016 AT&T Earnings — Financial and Operational Results at 10 (Oct. 22, 2016), available at [https://www.att.com/Investor/Earnings/3q16/master\\_3q16.pdf](https://www.att.com/Investor/Earnings/3q16/master_3q16.pdf).

companies such as Comcast and Charter also present a significant competitive threat. Comcast, for instance, “is able to offer retail BDS across much of its facilities-based footprint,”<sup>35</sup> while Charter has invested significantly “in the expansion of its BDS capabilities since the beginning of 2013” and “aggressively seeks new business across its footprint.”<sup>36</sup>

The merger *creates* a more viable competitor than each entity individually could have been *and* enables the combined company to expand service options to existing and future enterprise customers in New Jersey areas where both CenturyLink and Level 3 overlap as well as outside those areas. The affirmative benefits identified at Section II above are not bound to notions of “overlapping areas” and limited by years, as Rate Counsel assumes. The merger is a long-run endeavor and affirmatively facilitates competition throughout New Jersey.

### C. Service Quality

Rate Counsel – without factual support – presumes that an “increased focus” on the enterprise market automatically equates to “jeopardizing the quality of service offered among the various communities it serves.”<sup>37</sup> Rate Counsel goes on to disregard the Board’s regulations and asks that the Board “direct CenturyLink to provide this information...disaggregated to the wire center level.”<sup>38</sup> Finally, Rate Counsel “urges the Board to oversee any transition” relative to future copper retirements by CenturyLink.<sup>39</sup>

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<sup>34</sup> See Verizon Communications Inc., Financial and Operating Information at 15 (Sept. 30, 2016), available at <http://www.verizon.com/about/file/19557/download?token=BW4QtXRt>. This revenue data for Verizon predates its merger with XO.

<sup>35</sup> Comments of Comcast Corporation at 11, Business Data Services in an Internet Protocol Environment et al., WC Docket No. 16-143 et al. (filed June 28, 2016) (“Comcast BDS Comments”).

<sup>36</sup> Reply Comments of Charter Communications, Inc. at 2, Business Data Services in an Internet Protocol Environment et al., WC Docket No. 16-143 et al. (filed Aug. 9, 2016) (“Charter BDS Reply”).

<sup>37</sup> Comments at p. 19.

<sup>38</sup> *Id.*, at p. 18.

<sup>39</sup> *Id.* As an initial matter, Rate Counsel’s proposal remains too ambiguous for adoption by the Board. Petitioners believe that Rate Counsel’s “comprehensive assessment of service quality “as referenced at page 18 of the Comments means submission of reports *on all subparts of the Board’s regulations* at N.J.A.C. 14:10-1A.8 and N.J.A.C. 14:10-1A.9 *at a disaggregated wire center level*. Whether such detailed wire center reporting is sought for

First, service quality regulations already exist and CenturyLink's ILEC affiliate in New Jersey remains fully compliant with the Board's service quality regulations at N.J.A.C. 14:10-1A.8 (Service quality standards) and N.J.A.C. 14:10-1A.9 (Service quality reporting). There has been no demonstration by Rate Counsel that the Board's service quality regulations are inadequate or that CenturyLink has failed to comply with those existing Board regulations. In fact, as addressed in responses to discovery, CenturyLink complaints/inquiries have declined year over year.<sup>40</sup> Rate Counsel's proposal is clearly unwarranted.<sup>41</sup>

Second, Rate Counsel's proposed condition involves additional service quality reports *at the wire center level* and thus would be costly and burdensome to produce. There is no reason to believe that the merger, which will not affect the manner in which CenturyLink ILEC services are provisioned, will result in any decline in service quality. CenturyLink has been through recent mergers.<sup>42</sup> In this proceeding, Petitioners responded to numerous discovery requests. Yet, Rate Counsel has failed to provide any support for its claim of risk to service quality due to this merger – let alone risk warranting the cumbersome reporting requirements sought by Rate Counsel. The proposed costly, time-consuming, and burdensome additional reporting requirements are clearly wasteful and unnecessary.

Third, there has been no fact cited or support provided for Rate Counsel's *assumption* that the Board's service regulations at N.J.A.C. 14:10-1A.8 and N.J.A.C. 14:10-1A.9 *will be inadequate post-merger*. The Board's service quality regulations will continue to apply after the

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all or some portions of the regulations, the proposal is completely unsupportable for the reasons addressed in these Reply Comments.

<sup>40</sup> See, Response to RC-9.

<sup>41</sup> To the extent Rate Counsel seeks to change the Board's regulations, that effort should be undertaken in a rulemaking context rather than in this merger proceeding.

<sup>42</sup> See, RC-7 and RC-10. Moreover, CenturyLink in response to RC-7 provided confidential Exhibit RC-7(a) for years 2015, 2016, and January 2017 identifying by month trouble report rates for those years. Rate Counsel failed to provide one example of inadequate service quality based upon the information provided to Rate Counsel. CenturyLink's service quality in New Jersey does not warrant the significant reporting measures sought by Rate Counsel.

Transaction closes. Notwithstanding two prior transactions approved by the Board in April 2009 (CenturyTel/Embarq) and in December 2010 (CenturyLink/Qwest), CenturyLink's ILEC in New Jersey continued to provide quality service in compliance with the Board's regulations.<sup>43</sup> Rate Counsel's proposed attempt to impose significant reporting requirements over and above the Board's existing regulations must be rejected.

Finally, Rate Counsel urges the Board "to oversee any transition to new technology."<sup>44</sup> The retirement of copper and network transitions is governed by federal law. 47 U.S.C. § 214. The retirement of copper facilities and the transition to other wireline mediums, such as fiber, is being addressed in ongoing FCC proceedings. In fact, on April 20, 2017, the FCC released a notice and proposed rulemaking on a series of measures to expand the availability and affordability of next-generation networks and to remove regulatory barriers to wireline broadband infrastructure deployment.<sup>45</sup> The FCC is seeking public comment regarding the process for local exchange carriers to retire copper networks and provide notice of network changes. If Rate Counsel is concerned about copper retirements, its avenue of recourse is before the FCC and federal courts. Finally, as Rate Counsel correctly notes, CenturyLink has no current plans for copper retirement within its New Jersey service territory.<sup>46</sup> Rate Counsel's attempt to inject Board authority on non-merger specific matters being addressed at the federal level is inappropriate, unwise, and unnecessary.

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<sup>43</sup> See, *I/M/O CenturyTel, Inc. and United Telephone Company of New Jersey, Inc., d/b/a Embarq of an Indirect Transfer of Control*, BPU Docket No. TM08111017 (CenturyTel/Embarq Merger) and *I/M/O Qwest Communications Company, LLC, and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Communications Company, LLC* BPU Docket No. TM10050343 (Qwest/CenturyLink).

<sup>44</sup> Rate Counsel Comments at p. 19.

<sup>45</sup> See, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, Rel. April 21, 2017. See, <https://www.fcc.gov/document/accelerating-wireline-broadband-infrastructure-deployment>.

<sup>46</sup> Rate Counsel Comments at p. 19, citing Response to RC-15.

#### **D. Employment/Pensions**

The ability of a utility to fulfill pension obligations to its employees is a factor for the Board to consider per statute. *N.J.S.A. 48:3-7* and *N.J.S.A. 48:3-10*. The Board is statutorily authorized, where it appears that the utility is unable to fulfill such pension obligations, to deny approval unless the utility assumes responsibility sufficient to provide that all pension obligations to employees will be satisfied as they become due.<sup>47</sup>

As Joint Petitioners have consistently stated in pleadings and discovery responses, the merger will **not** impact any pension plan and all employees will retain the ability to utilize a 401K plan. Nonetheless, Rate Counsel makes two recommendations regarding employees and pensions. First, Rate Counsel requests that the Board mirror its employment condition from the recent Verizon/XO merger.<sup>48</sup> Second, Rate Counsel recommends that the Board require assurances from CenturyLink regarding continued access to Level 3 employee 401K plans. The Board should not adopt Rate Counsel's proposals as both are unnecessary.

As of November 30, 2016, Level 3 had 83 employees located in the State of New Jersey.<sup>49</sup> ***Of those 83 employees, only one employee is a participant in a legacy pension plan.***<sup>50</sup> As further explained in responses to Staff discovery, the pension plan for that employee is a protected benefit and the employee is guaranteed to receive his/her pension benefits as outlined

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<sup>47</sup> For example, *N.J.S.A. 48:3-7(a)*, in pertinent part provides:

Where, by the proposed sale, lease, or other disposition of all or a substantial portion of its property, any franchise or franchises, privileges, or rights, or any part thereof or merger or consolidation thereof as set forth herein, it appears that the public utility or a wholly owned subsidiary thereof may be unable to fulfill its obligation to any employees thereof with respect to pension benefits previously enjoyed, whether vested or contingent, the board shall not grant its approval unless the public utility seeking the board's approval for such sale, lease, or other disposition assumes such responsibility as will be sufficient to provide that all such obligations to employees will be satisfied as they become due.

<sup>48</sup> As per ordering paragraph 1 of the Verizon/XO order: "For four (4) years from the issuance of this Order, if there is any net loss of customer-facing jobs in New Jersey, greater than (15%), Verizon Communications shall notify the Board of such change and provide an appropriate explanation."

<sup>49</sup> Response to Staff OCTV&T 1. *See also*, Joint Petition at ¶29 (approximately 80 New Jersey Level 3 employees).

<sup>50</sup> Response to Staff OCTV&T 1.

in his/her pension plan document.<sup>51</sup> Since the proposed Transaction will not affect that employee's pension benefits – and given the lack of even an allegation of inability to fulfill that pension obligation – Joint Petitioners maintain that *N.J.S.A. 48:3-7(a)* and *N.J.S.A. 48:3-10* are not impacted.

Rate Counsel has failed to demonstrate why mirroring the Board's order in the Verizon/XO merger is applicable or necessary to the facts of this proposed Transaction. The combined size of CenturyLink and Level 3 relative to Verizon/XO in New Jersey as well as the small geographic areas and markets of CenturyLink in the state are far less than Verizon in New Jersey. These facts clearly render unnecessary any alleged concerns of overlap and potential headcount redundancy. Further, the customer service, network and operations functions that are critical to each company's success today will continue to be key focuses when the Transaction is complete. The post-Transaction company will be staffed appropriately to ensure that continuity. The combined company has important reasons to retain jobs to maintain its services and network quality and to compete effectively. To act otherwise would be to undercut the business itself.

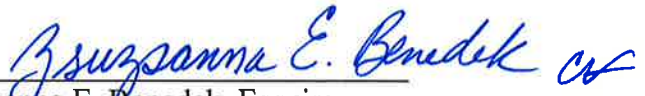
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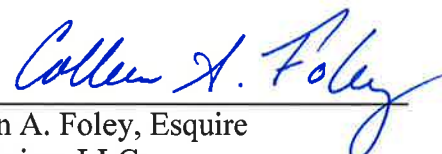
<sup>51</sup> *Id.* See also, Response to Staff OCTV&T 2.

**V. CONCLUSION**

For the foregoing reasons, Joint Petitioners request that the Board reject the Comments of Rate Counsel and issue a Board Order approving the Transaction at the Board's June 30, 2017 Public Meeting Agenda.

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