

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Applications of)
Broadwing Communications, LLC (U5525C);)
Global Crossing Local Services, Inc. (U5685C);)
Global Crossing Telecommunications, Inc.)
(U5005C); IP Networks, Inc. (U6362C); Level 3)
Communications, LLC (U-5941-C); Level 3)
Telecom of California, LP (U5358C); WilTel)
Communications, LLC (U6146C); and Level 3)
Communications, Inc., a Delaware Corporation;)
and CenturyLink, Inc., a Louisiana Corporation,)
for Approval of Transfer of Control of the Level 3)
Operating Entities Pursuant to California Public)
Utilities Code Section 854(a).)

A.17-03-016
(Filed March 23, 2017)

CETF Comments on Motion to Approve Settlement

In Opposition to Portions of Settlement

PUBLIC VERSION

(Pages 10, 13, 14 Contain Confidential Information)

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Dated: July 21, 2017

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Pursuant to Rule 12.2 of the California Public Utilities Commission (Commission or CPUC) Rules of Practice and Procedure, the California Emerging Technology Fund (CETF) hereby files its Comments in opposition to portions of the settlement agreement filed in the Joint Motion of the Office of Ratepayer Advocates, The Utility Reform Network, The Greenlining Institute and the Joint Applicants for Approval of Settlement (Joint Motion) relating to the above-referenced application (Application) proposing a transfer of control of Level 3 Communications (Level 3) to CenturyLink, Inc. (CenturyLink). CETF hereby objects to the capital expenditures investment section of the settlement agreement on grounds the agreement fails to affirmatively state any tangible and concrete public interest benefits for the people of California as required by Commission case law and statute. The language is vague as to the project selection and criteria, fails to include CETF as a party to agree to the capital expenditure investment projects and as a party who receives the progress reports, does not provide an investment beyond what is “business as usual”, does not require explicit Commission approval if

there is lack of agreement on projects via a Tier 2 advice letter filing, and is inadequate as to enforcement of the settlement agreement obligations. As a result, the settlement agreement fails to meet the Section 854(a)¹ standard of review, which includes criteria of Sections 854(b)² and (c)³ in the public interest assessment, and should be rejected unless renegotiated consistent with the concerns expressed by CETF herein. Further, CETF requests a prehearing conference and a briefing schedule on the legal issues relating the Section 854(a) and the standard of review for transfers of control involving non-dominant carriers.

I. Introduction

CETF is a statewide non-profit organization with the mission to close the Digital Divide in California. CETF was founded as a public benefit from the mergers of SBC-AT&T and Verizon-MCI approved by the California Public Utilities Commission (CPUC) in 2015. CETF studies and addresses the challenges of both “supply” (deployment) and “demand” (adoption) of technologies enabled by broadband. It has invested in programs and policy to encourage bringing broadband infrastructure to unserved and underserved communities, to bring digital literacy training programs to communities that need it, and to provide independent data on broadband deployment/policies/strategies to government agencies including the Federal Communications Commission, U.S. Department of Commerce NTIA, and U.S. Department of Agriculture Rural Utilities Service, the California Legislature, this Commission, the Governor’s Administration, and local agencies.

In pursuing its mission in the last four years, CETF has participated through public comment or as an official party in a number of major corporate consolidations in the broadband space – Comcast/Time Warner (FCC and CPUC), Frontier/Verizon (FCC and CPUC), AT&T/DirecTV (FCC), Charter/Time Warner/Bright House (FCC and CPUC), Altice/Cequel (FCC) – with consistent recommendations regarding the need for tangible public benefits for broadband deployment and adoption in this state that are derived as a result of the mergers and acquisitions. CETF participates as an official party before both before the FCC and CPUC.

¹ Cal. Pub. Util. Code § 854(a) (2017).

² Cal. Pub. Util. Code § 854(b) (2017).

³ Cal. Pub. Util. Code § 854(c) (2017).

CETF has been successful in obtaining, through voluntary commitments enforced by a regulatory agency, a variety of verifiable public benefits for consumers including discounted broadband rates and free/discounted electronic devices for low-income, unserved and underserved communities, public WiFi hotspots provided at no cost to the public, and voluntary commitments for broadband infrastructure construction in unserved or underserved areas as defined by the California Advanced Services Fund. Federal regulators and this Commission have relied upon broadband data and testimony of CETF in several major merger decisions.

In recent years, CETF has negotiated legally-enforceable memoranda of understanding (MOUs) with two communications companies, Frontier Communications and Charter Communications, in their recent mergers with Verizon Communications and Time Warner Cable/Bright House, respectively. These MOUs have benefited low-income, unserved and underserved communities in the state in the areas of broadband access and adoption. It is with this background and in this context that CETF proffers its objection to the broadband portions of settlement agreement presented in the Joint Motion relating to the CenturyLink acquisition of Level 3.

II. Procedural History

In this matter, CETF filed a timely protest on May 5, 2017, to this Application. On the same date, the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN) and the Greenlining Institute (Greenlining) (collectively, the Consumer Groups) also filed a consolidated protest. Applicants filed a consolidated reply on May 15, 2017, urging the Commission to reject all the protests.

In three telephonic settlement conferences beginning May 17 through June 12, CETF engaged in substantive, good faith settlement discussions seeking primarily a commitment for new broadband infrastructure projects (example construction of middle mile and Points of Presence facilities) to unserved and underserved areas of California by the Applicants over a reasonable time frame. These discussions occurred separately from the Consumer Groups that are parties to the settlement agreement contained in the Joint Motion. At the last settlement conference on June 12, the Applicants broke off conversations with CETF, and indicated

Applicants had settled in principle with the Consumer Groups, and declined to proceed further with CETF towards a settlement agreement.

On June 22, 2017, after a notice of the settlement was served on all parties in compliance with Rule 12.1, CETF participated with the Applicants and the Consumer Groups on a telephonic settlement conference where CETF's representatives were briefed on the settlement that is contained in Exhibit A to the Joint Motion. On June 30, 2017, Applicants and Consumer Groups jointly filed the Joint Motion and a contemporaneous Motion for Expedited Treatment and Order Shortening Time requesting that response be filed within 14 days of the Motion, instead of 30 days provided by Rule 12.2, and replies submitted within 5 days and not the 15 provided by the same rule. CETF did not oppose the Motion for Expedited Treatment and Order Shortening Time. The Assigned ALJ granted the Motion for Expedited Treatment and Order Shortening Time in a ruling dated July 7, 2017 and ordered responses to the Joint Motion due on or before July 21, 2017. CETF is timely filing its Comments to the Joint Motion for Approval of the Settlement Agreement.

III. The Settlement Standard of Approval Is that the Settlement Be Reasonable in Light of the Whole Record, Consistent with the Law, and in the Public Interest

Under Rule 12.1(d) of the Commissioner's Rules of Practice and Procedure, "a settlement should not be approved, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest."

A. The Settlement Is Not "Reasonable in Light of the Whole Record" Because There Is a Skinny Factual Record at Best

First, CETF respectfully submits that the settlement is not reasonable in light "of the whole record" because only the skinniest factual record has been established. No prehearing conference has been held, no hearings have been held, and not a single brief has been filed. Therefore, there is very little record except what the Applicants have asserted in their Application, their replies to the protests of the three Consumer Groups and CETF, and some data that Applicants apparently gave to the three Consumer Groups and filed as Confidential Exhibit B to the Settlement Agreement. The Applicants are rushing to achieve a closing date at the end

of September and short changing the fact finding and briefing process in hopes the Commission will not impose public interest conditions on it. CETF requests the Commission not rush to approve a partial settlement, but instead look carefully at the terms of the settlement agreement to ensure the commitments are explicit and clear, enforceable and transparent to the public.

B. The Settlement is Not Consistent with the Law, Particularly Recent Communications Cases Requiring Concrete Public Interest Commitments

Second, the settlement agreement fails to be consistent with recent Commission communications transfer of control cases where *explicit public benefits* were made conditions of Commission approval and were enforceable by the consumer interest groups who secured the public benefits on behalf of consumers. In its initial Protest, CETF found the Application sorely lacking in that there was not a single concrete public interest commitment for broadband made.⁴ CETF opined that Applicants could have acknowledged the Commission's decade long effort to upgrade broadband infrastructure in the state and made affirmative public interest benefit proposals to provide investment in middle mile access infrastructure to last mile Internet Service Providers who desire to provide service to underserved and unserved areas in the state.⁵ Applicants could agree to participate in public private partnerships with entities that provide broadband service to anchor institutions, such as schools, libraries, community colleges, universities, libraries, emergency responders, government agencies, public health care providers, and non-profit, community-based organizations. But instead, the Application is devoid of these public benefits, and the settlement agreement contains promises of public benefits only.

In a competitive broadband environment dictated by federal and state telecommunications law, the State must rely on the competitive marketplace for new broadband infrastructure and on the goodwill of its broadband providers in providing broadband infrastructure for all residents, not just urban residents. The California Advanced Services Fund (CASF) program is one way that the State has contributed telephone (wireline and wireless)

⁴ Protest of California Emerging Technology Fund to the Proposed Merger of CenturyLink and Level 3 Communications, filed May 5, 2017, in A.17-03-2016, at 8 (CETF Protest).

⁵ It is well known that a major issue facing the state's Digital Divide goals of connecting 98% of our residents is the lack of middle mile Internet infrastructure to rural, remote and tribal areas of the state. Building middle mile infrastructure and connecting Internet connections with high capacity for business and enterprise customers is the heart of the Level 3 business.

consumer surcharges to fund broadband infrastructure to unserved and underserved rural, remote and tribal communities. Another important way this Commission has provided incentives for broadband infrastructure has been to look for voluntarily commitments by corporations when approving mergers in the communications area. In the very recent past, this Commission has required voluntarily rural infrastructure commitments as conditions to mergers in dockets involving broadband providers. See, for example the 2015 Frontier-Verizon transfer of control decision, in which this Commission ordered Verizon Communications, Inc. (Verizon) and Frontier Communications Corp. (Frontier) to take all steps necessary to apply for and obtain Connect America Funds and Remote Area Fund support from the FCC, and then spend it on the most remote unserved and underserved portions of the service area where connections to schools and another anchor institutions may be deficient and where energy facilities and pole structures may be absent.⁶ In D.16-05-007, the Charter-Time Warner Cable merger decision,⁷ Charter Communications executed Memoranda of Understandings with various consumer and public interest groups including CETF, and made numerous voluntary explicit public interest commitments, including to deploy 70,000 new broadband passing to current analog-only cable service areas in six rural counties within three years; increase broadband speeds to all California households over three years; and bring all households in California to an all-digital platform with increased download speeds over three years.

Similarly, the FCC has ordered merger conditions that include voluntary broadband infrastructure builds. *See* In the Matter of Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations, Memorandum Opinion

⁶ Decision No. 15-12-002, In the Matter of the Joint Application of Frontier Communications Corp., Frontier Communications of America, Inc., Verizon California, Inc., Verizon Long Distance LLC, and Newco West Holdings LLC for Approval of Transfer of Control over Verizon California, Inc. and related Approval of Transfer of Assets and Certifications, A.15-03-005, filed Mar. 18, 2015, issued Dec. 9, 2015 (Frontier-Verizon Decision), Ordering Para. 12, at 82.

⁷ Decision No. 16-05-007, In the Matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA-CCO, LLC; Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC; Advance/Newhouse Partnership; Bright House Networks Information Services (California), LLC Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of Both Time Warner Cable Information Services (California), LLC and Bright House Networks Information Services (California), LLC to Charter Communications, Inc. and for Expedited Approval of a Pro Forma Transfer of Control of Charter Fiberlink CA-CCO, LLC, A. 15-07-009 (issued May 16, 2016)(Charter-Time Warner Decision), at Ordering Paragraph 2 (outlining conditions of the approval).

and Order, FCC 15-94 (rel. July 28, 2015). In this FCC Order, AT&T committed to, among other things: (1) offer Fiber to the Home⁸ broadband Internet Access Service to at least 12.5 million mass-market customer locations, including residences, home offices and very small businesses but excluding large enterprises and institutions; (2) to offer 1 Gbps FTTP service to cover E-rate eligible schools and libraries in its service areas with FTTP service; and (3) offer a discounted broadband services program for \$10 a month for eligible households (one person participating in the Supplemental Nutritional Assistance Program) in its footprint.

Thus, in the face of this voluminous body of federal and state case law, contrary to the protests of the Applicants that CETF is seeking to “impose a new standard for approval of the indirect transfer of non-dominant carriers that is not supported by law, sound public policy, Commission precedent or the facts presented by this Joint Application,”⁹ what CETF is seeking is indeed fully consistent with FCC and recent Commission case law.

C. The Settlement Agreement Is Not in the Public Interest as to Broadband Infrastructure, the Heart of Level 3’s California Business

Third, CETF does not find a key portion of the settlement agreement in the public interest. In its Consolidated Reply at pages 2-4, Applicants argue that because Level 3 Operating Companies are non-dominant carriers that provide service exclusively to wholesale and enterprise customers, and because the operating entities have annual California revenue under the \$500 million threshold triggering additional review under Sections 854(b) and (c), they should be held to only the Section 854(a) standard of the Public Utilities Code which requires a finding by the Commission that the transfer of control will not be adverse to the public interest. CETF finds this line of argument contrary to the plain language of Section 854(a). The transfer of control must still be found in the public interest. This public interest standard is not waived

⁸ Fiber-to-the-Home (FTTH) and Fiber-to-the-Premises (FTTP) refers to fiber-optic communication delivery, in which an optical fiber is run in an optical distribution network from the central office all the way to the premises occupied by the subscriber.

⁹ Consolidated Reply to the Joint Protest of ORA, TURN and Greenlining and the Protest of the California Emerging Technology Fund to the Application for Approval of the Transfer of Control of the Level 3 Operating Entities Pursuant to Public Utilities Code Section 854(a) (Consolidated Reply), filed May 15, 2017, A.17-03-016, at 2-4.

for non-dominant carriers, nor is it relaxed for companies with less than \$500 million in annual California revenue, as argued by the Applicants.

Further as CETF argued extensively in its initial Protest, this Commission has used Sections 854(b) and (c) criteria as context for the public interest assessment, even if the Sections 854(b) and (c) do not expressly apply to the transaction.¹⁰ Under those sections, the Commission must find that proposed transaction does all of the following: (1) provides short-term and long-term economic benefits to ratepayers; (2) equitably allocates total short-term and long-term forecasted economic benefits of the merger between shareholders and ratepayers; and (3) does not adversely affect competition. Under Section 854(c), the Commission should consider each of the eight criteria below and find, on balance, that the merger, acquisition or control proposal is in the public interest: (1) maintain and improve the financial condition of the resulting public utility; (2) maintain or improve the quality of service to public utility ratepayers; (3) maintain and improve the quality of management of the public utility; (4) be fair and reasonable to affected employees; (5) be fair and reasonable to the majority of the affected public utility shareholders; (6) be beneficial on an overall basis to the state and local economies and to the communities in the area served by the resulting public utility; and (7) providing mitigation measures to prevent significant adverse consequences which may result. The transfer of control here requires a close Commission review because of the significant role of Level 3 as one of the few independent, non-incumbent providers of broadband infrastructure in the state. The public interest demands the Commission review this significant acquisition and consider consistent with Sections 854 (a), (b) and (c) the impacts on the services provided by the Applicants to this state's broadband infrastructure and on customers who purchase wholesale services from Applicants. How will this merger be beneficial on an overall basis to the state and local economies and to the communities in the areas served by the resulting operating entity?

As CETF pointed out in its initial Protest, the public benefits cited by the Applicant at pages 18-20 of its Application offer very little other than "business as usual" for future customers of the post-merger CenturyLink.¹¹ Now that the settlement agreement has been

¹⁰ CETF Protest, at pages 4-5.

¹¹ First, the Applicants said they will make "significant capital investments in the state" but offered not a single enforceable firm commitment to do so, making it clear in footnote 28 at page 18 of the Application that they will

revealed, CETF is alarmed that this agreement is merely “business as usual” at a lower revenue level than historical levels in terms of the broadband infrastructure deployment proposed for the state, and the agreement contains “wobble words” as to the Applicant’s capital expenditure investment commitment on infrastructure.

CETF respectfully requests a close review of the section entitled “Investment -- Capital Expenditures” found at page 5 of the settlement agreement. In this section, it states that:

Total California capital expenditures for calendar year 2018 through calendar year 2020 combined for CenturyLink and the Level 3 Operating Entities shall be no less than \$323 million. CenturyLink and the Level 3 Operating Entities *will aspire to commit* the \$323 million in California capital expenditures investment to meet customer demand and anticipated need for network expansion and/or upgrades by the end of calendar year 2019. CenturyLink and the Level 3 Operating Entities will work with the CPUC Communications Division, TURN, ORA, and Greenlining, to identify mutually agreeable locations where the companies will invest new middle mile infrastructure and new points of presence as part of their total California capital expenditures for calendar years 2018-2020, focusing on locations where unserved/underserved communities exist. A workshop with these stakeholders and other Protestors to this proceeding, to discuss possible locations for expansion must be held no later than four months from the date of the closing of this transaction. Parties to this Agreement agree to schedule subsequent workshops if necessary. If parties to this Settlement Agreement have not identified mutually agreeable locations for middle mile and point of presence projects by June 30, 2018, CenturyLink and the Level 3 Operating Entities will submit a Tier 2 Advice Letter to the Commission by September 1, 2018 with proposal[s] for project[s] that meet the criteria set forth in this Settlement Agreement. The proposals shall include a detailed description of the project[s] and budget[s] for the project[s].
[emphasis added by CETF in italics]

This section is followed by a reporting requirement that essentially has the Applicants filing “a confidential detailed bi-annual progress report” with the Commission’s Communications

only build what they are paid to build by a paying customer. Second, the Applicants further stated that by integration of operations, they will better “coordinate network planning and engineering to offer new advanced services and maximize facilities deployment” and thus “help create a more robust, non-affiliated competitor to the large incumbent and cable providers (e.g. AT&T, Verizon, and Comcast) in the state.” (Application, at 18.) Again, not a single voluntary commitment or any detail is given to this Commission as to what those promised “advanced services facilities” may be, and how that in any way provides a viable or more stable competitor to the incumbent providers cited. Third, the Applicants tout that combining the entities will “ensure route diversity” increasing security for enterprise and wholesale customers, and provide “on-Net capabilities on a national and global level.” (Application, at 19.) As to this alleged public benefit, the Applicants admit at page 19, paragraph two, that “no detailed plans regarding California networks or service offerings have been developed at this stage” and so assertions that overlapping facilities could be combined and that connectivity for national or global enterprise customers could be improved are mere assertions without substance. CETF suggests that the people of California deserve more concrete public benefits than these amorphous promises.

Division Director, ORA, TURN and Greenlining – but not CETF – identifying the progress made on the total California capital expenditures for 2018, 2019 and 2020, filed on September 1st and March 1st. The reports will be broken out by investment category and geographic location. For each middle mile and Point of Presence project, the progress report will include the budget, expenditures spent on each of the projects, and the work completed during the reporting period.¹²

First, and most importantly, this “commitment” only requires the Joint Applicants to “aspire to commit the \$323 million” in California capital expenditures investment “to meet customer demand and anticipated need for network expansion and/or upgrades by the end of calendar year 2019.”¹³ The key word “aspire” clearly means that this \$323 million figure is unenforceable because it is merely *aspirational by the Applicants*. To CETF, this aspirational goal compared to the concrete commitments obtained in the prior case law discussed earlier is completely and utterly unacceptable. This language makes a mockery of the Section 854(a) requirement for public interest benefits.

Second, CETF takes issue with the total dollar figure proposed in the Settlement Agreement for California capital expenditures investment. If the total commitment is \$323 million, on a per year basis, CenturyLink and Level 3 will invest \$107.66 million a year for calendar years 2018, 2019 and 2020. According to the Application’s confidential information, in 2015, annual California intrastate revenue for all the Level 3 companies was **[confidential begins]** **[confidential ends]**. From Confidential Exhibit A, the annual California intrastate revenue from CenturyLink’s two companies was **[confidential begins]** **[confidential ends]**. Thus the total 2015 historical California intrastate revenue for both Applicant entities was **[confidential begins]** **[confidential ends]**. CETF challenges why the per year California capital expenditure “aspirational commitment” under the Settlement Agreement is significantly lower than the 2015 combined annual revenues.

Further, CETF is the expert broadband non-profit organization in the state, established by the CPUC and dedicated to its mission of closing the digital divide. As such, CETF works closely with the Regional Broadband Consortia and local leaders to identify unserved and underserved areas, in addition to meeting with the Commission’s Communications Division staff

¹² Settlement Motion, Exhibit A, Settlement Agreement at 5.

¹³ See second sentence of the quoted section.

on broadband mapping, identifying high priority and high impact unserved and underserved areas, CASF policy, and issues relating to bringing broadband to affordable housing projects in the state. CETF is pleased it will be invited to the workshop with the Consumer Groups to identify mutually agreeable projects, but under the Settlement Agreement, CETF is not part of the decision making group that identifies the locations for the middle mile and Point of Presence projects that may be funded. While ORA, TURN and Greenlining have varying expertise in broadband matters, this is the main policy area of focus for CETF and it makes no sense for CETF to be excluded from a more defined role in the project identification. If CETF is not allowed to participate in the decision making group on project locations, CETF suggests that other state broadband leaders be included in that group such as the U.S. Department of Agriculture Rural Utility Service state broadband coordinator, or the State of California's Department of Technology's Assistant Secretary of Broadband and Digital Literacy. Further, CETF is not included as a recipient of the Progress Reports required by the settlement agreement. CETF requests that it be allowed to obtain these Progress Reports in addition to the Consumer Groups as CETF monitors progress toward the state goal of 98% deployment.

CETF further takes issue with the Tier 2 Advice Letter process proposed in the Settlement Agreement. CETF proposes a Tier 3 advice letter which requires the Communications Division to prepare a resolution and have the Commission approve it, instead of the delegation to the Communications Division staff under a Tier 2 advice letter process under CPUC General Order 96-B. In the case where the Applicants and the Consumer Groups cannot mutually agreeable on project locations, CETF recommends that the Communications Division (with Commission approval) should be involved to ensure the projects are acceptable, the budgets proposed are reasonable, and that the Applicants are fulfilling their settlement public interest commitments. Finally, CETF requests all settlement agreement commitments be made enforceable conditions of the transfer of control decision by the protesting parties and the public.

D. In Crafting a Settlement Agreement, It Must Be Fair, Appropriate and Comparable as to Past Transfers of Control Cases

When CETF evaluated this transfer of control, it found this to be a merger of significant players in the California communications marketplace. Level 3 is one of the few broadband infrastructure providers in the state that is not an incumbent telephone company or cable provider. Level 3 is a key provider of broadband middle mile and building out new Internet Points of Presence in the state. It plays an important role as a neutral player in the marketplace. As the initial protests reveal, there was nervousness on the part of the Consumer Groups and CETF as to whether CenturyLink, an incumbent telephone company in other states, would allow Level 3 to continue to be neutral in its buildout and services to all players in the telecommunications marketplace.

On the date CETF filed its protest to the transfer, the market cap of CenturyLink was \$13.6 billion and it had 40,000 employees. The market cap of Level 3 was \$21.5 billion, and it had 12,600 employees. *Together, the Joint Applicants have a combined market cap of \$35.10 billion and will employ approximately 52,600 employees.* CETF finds this to be a company of impressive scope, assets and size.

In prior communications mergers and transfers of control, the Commission has ordered public interest benefits to flow from the transaction to ensure that the public benefits from the acquisition. CETF has performed two levels of analysis to determine what the “fair, appropriate and comparable” level of public benefit should be ordered from this transfer, based on market capitalization. The table below summarizes data on market capitalization that CETF analyzed initially.

Measure of Market Presence	AT&T	Verizon	Comcast	Time-Warner Cable	Charter Communications	Frontier Communications	CenturyLink-Level 3
Market Cap (in billions) (as of May 2017, date CETF filed Protest)	\$204.34	\$180.35	\$150.21	\$59.37	\$20.94	\$6.02	\$35.10
Reported Revenues (in millions)							
2013	\$128,752	\$120,550	\$64,657	\$22,100	\$8,419	\$4,762	
2014	\$132,447	\$127,079	\$68,775	\$22,800	\$9,108	\$4,772	
2015	\$146,800	\$131,620	\$74,510	\$28,120	\$9,754	\$5,580	

Source: <http://marketwatch.com/investing> (search for company, choose Financials, and select historic annual revenue)

Next, what is the fair public interest benefit the state should expect from a merger of this size and scope? In the CETF Memorandum of Understanding with Frontier and Verizon (Frontier- Verizon MOU) on their transfer of Verizon’s landline systems to Frontier,¹⁴ a conservative valuation of the public benefits for the broadband infrastructure deployment and broadband adoption offer (exclusive of public WiFi hotspots) is \$327 million. In the Charter-Time Warner-Bright House merger, a conservative valuation of the public benefits achieved in the CETF MOU with the Applicants¹⁵ is \$511 million.

In reviewing the data related to this transaction, CETF concluded that a reasonable public interest benefit for this Level 3 – CenturyLink merger should be approximately in the range of \$300 million. Once CETF received the confidential documents filed in this docket, it also studied the California-only revenues of the Joint Applicants combined. After considering this additional information, CETF concluded that at a bare minimum, **[confidential begins]**

[confidential ends] per year is a reasonable public benefit, which represents 10% of the last reported year of revenue of the Joint Applicants. CETF contends that putting 10% of annual

¹⁴ Frontier-Verizon Decision, Appendix E (CETF MOU).

¹⁵ Charter – Time Warner Decision, Section 1.1.4.5 describing CETF MOU with Applicants at pp. 12-14; see also Ordering Paras. 2(a) and 2(c), at pp. 70-71 (ordering Applicants to comply with CETF MOU and giving protesting parties ability to enforce MOU terms before the Commission).

revenue towards public interest projects is fair, appropriate and reasonable. Over three years, this would be a public benefit of [confidential begins] [confidential ends]. Over five years, this would be a public benefit of [confidential begins] [confidential ends].

Thus, CETF recommends that a fair, appropriate and comparable public benefit in light of past case law and the data presented herein, is in the range of \$250 million - \$300 million in public interest benefits for California consumers. In light of a positive outcome of Level 3 negotiations for a contract with CENIC, a non-profit organization that provides a fast broadband network to California's public universities, K-12 schools and libraries, CETF gave a "credit" of \$50 million for a positive contract for a public service organization, bringing an appropriate, fair and comparable public benefit to *\$250 million*.

However, CETF insists that this \$250 million must be for capital expenditure investment projects that truly serve the "public interest", not "aspirational" capital expenditures spent by Level 3 for "business as usual" commercial and business customers in California. The settlement agreement should be amended to add specific criteria as to what constitutes an acceptable public interest project. In CETF's view, public interest projects include the following: (1) projects to bring middle mile broadband infrastructure or Internet Points of Presence to unserved or underserved communities, according to the current CASF program definitions and the latest CPUC California broadband map; (2) projects to bring middle mile or Internet POPs to a community anchor institution such as schools, public libraries, community colleges or community centers; or (3) a project done to bring upgraded broadband facilities to public safety organizations, emergency responders or county fairgrounds (which are State-owned assets) that lack Internet access but are used for emergency response purposes. In this list, CETF has attempted to understand Level 3's business in California and suggest the types of projects that are reasonable for the company.

Further, CETF recognizes that the nature of the Level 3 business in California is different than other prior consolidations involving incumbent telephone and cable companies. But this does not make the role of Level 3 any less important such that the Commission should waive the public interest benefit for the transaction. For example, long haul of Internet traffic is critical to (1) large tech, Internet, and app economy companies (examples, Google, Apple, Facebook, eBay,

Saleforce, Uber), (2) the movie industry; (3) public safety and emergency responders; (4) and public service non-profits like CENIC, a non-profit organization which provides high speed broadband to the State universities and colleges, research institutions, and K-12 schools and public libraries. This is why a public benefit contribution should align with Level 3's long-haul network and business model. In our settlement discussions, CETF brought to Applicants some unique ideas of how it could contribute to public safety for the state. Applicants briefly explored the idea, but it was not pursued. This is the type of logical "fair and appropriate" public benefit that is an extension of the Applicant's business model in the state.

Finally, as explained above, what is required of CenturyLink and Level 3 should be roughly comparable to what has been ordered as a public benefit in the Frontier-Verizon and Charter-Time Warner decisions. Looking at those decisions and the market cap figures in the table above, it is reasonable for this Commission to require a higher figure for a voluntarily commitment that is made a condition of the merger. CETF hopes that a spirit of cooperation and collaboration can be brought to the table by the Applicants and the Consumer Groups in selecting the public interest projects.

Based on these data points, CETF attempted to negotiate a reasonable settlement with the Joint Applicants that "fair, appropriate and comparable". Unfortunately, CETF was unsuccessful but respectfully requests that the Commission ensure there are real, quantifiable public benefits that are made enforceable conditions of the transfer of control if approved.

WHEREFORE, CETF respectfully requests that this Commission require \$250 million to \$300 million in project commitments with true public benefits relating to the above referenced transfer of control. CETF specifically requests the capital expenditure investment portion of the settlement agreement be rejected, on grounds it:

- Is merely aspirational
- Fails to state adequate criteria for projects
- Does not provide enough accountability for the Applicants should they fail to perform the obligations in the agreement
- Does not provide an investment level beyond what is "business as usual"

- Does not require explicit Commission approval if there is lack of agreement on projects via a Tier 2 advice letter filing, and is inadequate as to enforcement of the settlement agreement obligations

Given these issues it difficult to see how the settlement agreement will benefit the people of the state of California. CETF requests this portion of the settlement agreement be amended to require at least \$250 million - \$300 million in required public benefit projects according to more specific criteria, for example, bringing broadband service to unserved and underserved areas of the state as defined by the current California Advanced Services Fund and as shown on the current CPUC broadband map, or benefitting community anchor institutions or public safety/emergency responders. Further, CETF requests the Settlement Agreement be amended to include CETF in all workshops and as a consumer party that will mutually agree with Applicants on projects that will satisfy the capital expenditure investment requirement. CETF requests that it receive all progress reports of Applicants' compliance with the settlement agreement along with the Consumer Groups. Finally CETF requests that any settlement agreement be made a condition of the transfer of control decision, and that any party to the settlement agreement be granted the ability to apply to this Commission for an order to enforce any aspect of the settlement agreement where Applicants have failed to deliver, and that Applicant consent to the jurisdiction of this Commission to enforce the settlement agreement.¹⁶

¹⁶ See the Charter – Time Warner Decision, Ordering Para. 2 (c), at page 70 for precedent.

Finally CETF requests there be a prehearing conference to set forth a briefing schedule as to the legal issues relating to the standard of review and the meaning of a public interest commitment.

Respectfully submitted,

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