

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Applications Filed for the Transfer of Control of) WC Docket No. 16-403
Level 3 Communications, Inc. to CenturyLink, Inc.)
)

**REPLY COMMENTS OF FRONTIER COMMUNICATIONS
CORPORATION**

Pursuant to the Public Notice issued in the above captioned proceeding,¹ Frontier Communications Corporation (“Frontier”) files these reply comments in response to the applications submitted by CenturyLink, Inc. (“CenturyLink”) and Level 3 Communications, Inc. (“Level 3”) (jointly, the “Applicants”). Approval of this transaction without sufficient conditions is contrary to the public interest, fair and reasonable competition, and the continued effort to deploy critical affordable broadband services that drive economic growth and prosperity across the nation, especially in rural communities. In particular, the increased scale that will result for the Applicants will further frustrate the purposes of 47 U.S.C. § 201, which requires that carriers engage in just and reasonable practices. Frontier is concerned that Applicants will use their increased scale to avoid paying agreed upon amounts, either through tariffed rates or commercial agreements, to smaller competitors. If left unchecked, the Applicants will leverage their stronger market position as long-haul and core network providers to potentially squeeze competitors and unnecessarily drive up costs for rural broadband providers and thereby adversely affect rural broadband deployment.

¹ See *Applications Filed for the Transfer of Control of Level 3 Communications, Inc. to CenturyLink, Inc.*, Public Notice, DA 16-1435, WC Docket No. 16-403 (Dec. 21, 2016).

The Commission's Review

Under the Commission's public interest framework for reviewing proposed transactions, CenturyLink and Level 3 must demonstrate "that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity."² In particular, the Commission "consider[s] whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes."³

As described below, absent appropriate merger conditions, there is a substantial risk that the proposed transaction will frustrate the Commission's implementation of 47 U.S.C. § 201, which requires that carriers like CenturyLink and Level 3 generally engage in just and reasonable practices. Specifically, under Section 201(b), "[a]ll charges, practices, classifications, and regulations for and in connection with" common carrier communications services must "be just and reasonable[;] . . . any such charge, practice, classification, or regulation that is unjust or unreasonable is . . . unlawful."⁴

Level 3's Conduct towards Frontier

Level 3, and to a lesser extent CenturyLink, has been unreasonably refusing to pay or delaying payment on millions of dollars for services rendered by Frontier. Frontier, as a provider

² See, e.g., *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131 ¶ 18 (2015) (citing 47 U.S.C. § 310(d); 47 C.F.R. § 25.119).

³ See, e.g., *id.*

⁴ See 47 U.S.C. § 201(b).

of data, video, and voice services to commercial and consumer customers in 29 states,⁵ has extensive agreements with Level 3 and CenturyLink for high-capacity data services, including internet backbone transmission and long-haul services. These services are critical for Frontier to serve its customers, especially in the more rural portions of its footprint. Frontier sells services to Level 3 and CenturyLink, particularly where the Applicants are serving enterprise customers in Frontier's service area. Rather than timely paying amounts due, however, Level 3 in particular disputes a significant number of charges and is often delayed in remitting payments.

Level 3's conduct goes far beyond a reasonable level of disagreement over the appropriate application of certain charges when parties are paying tens of millions of dollars in services. Level 3 routinely disputes a significant percentage of its bills, which is disproportionate to the number of charges that other purchasers dispute. Of course, every time Level 3 disputes a charge, Frontier must allocate resources to review it. If there is merit to the dispute, Frontier promptly issues a credit. If there is no merit, Frontier will deny the dispute with the expectation that payment will follow. However, Level 3's practice is to always drag its feet in responding, or disagree with the denial, keeping money owed to Frontier in its accounts and earning interest on it. It appears that Level 3 is seeking to so overwhelm the seller of services that some of the disputes will fall outside the collection window, or worse, it can force settlement of these disputes for a fraction of the amount due. To illustrate the current scope of the problem, according to Frontier's records, Level 3 is over 90 days in arrears for millions of dollars in services rendered, an amount that is more than twice that Frontier bills to Level 3 on a monthly basis.

⁵ See Frontier Communications, *Overview* (last accessed Jan. 12, 2017), <https://frontier.com/corporate/about-us/overview>.

Since CenturyLink and Level 3 filed their applications at the FCC, Level 3 has shown somewhat of a renewed interest in discussing the excessive outstanding amounts owed to Frontier. While Frontier and Level 3 have made marginal progress in clarifying the disputed issues and a process for resolving them, Level 3 still owes Frontier far too much for Frontier not to take additional action. Given the timelines for the Commission's review, Frontier had little choice but to file these reply comments. Additionally, Frontier remains concerned that even if it is able to negotiate a resolution during the pendency of the Commission's review, Level 3's unreasonable practices will deteriorate if the transaction is approved.

Increased Scale May Exacerbate This Problem

Frontier is concerned that these problems will only get worse if the transaction is approved and, certainly if it is approved without conditions. The combined company will be able to use its substantially increased scale and control over critical core network and long-haul facilities to further delay and refuse to pay amounts duly owed and otherwise leverage its market power. (Each company individually, particularly Level 3, already poses a problem.) Indeed, the Applicants' own submissions acknowledge that one of the driving forces behind the transaction is to gain further leverage in the enterprise service market.⁶ Their past practice also indicates that the Applicants may further hinder competition by avoiding their contractual obligations. Frontier is especially concerned about Level 3 not resolving outstanding problems before its ownership changes and the history regarding these issues is inevitably lost.

⁶ See, e.g., Level 3 and CenturyLink, Consolidated Application to Transfer Control of Domestic and International Section 214 Authorizations, Public Interest Statement, WC Docket No. 16-403 at B-2 (Dec. 12, 2016) ("The Transaction will enable the Applicants to combine these complementary businesses to become a more effective competitor in the provision of enterprise services.").

Level 3's Conduct Hinders Broadband Investment

Finally, as a provider with a particularly large rural footprint, Frontier is concerned that the transaction will hurt rural broadband deployment and affordability both for its own customers and for other smaller providers who may not have the resources to actively comment in this proceeding. Moreover, because Level 3's actions drive up the costs of doing business and negatively implicate deployment capabilities, they directly influence the health and prosperity of the labor market and local economies of sensitive rural communities. As the Commission has recognized, Frontier has a strong history of deploying broadband and expanding access to broadband services, particularly in rural America, where it is most expensive to deploy.⁷ While Frontier is eager to continue to support the growth and vibrancy of rural economies and to further expand rural broadband access, Frontier must be able to recover amounts it is owed from larger carriers in a timely fashion in order to do fund that investment. It is not possible to plan for, and ultimately pay for, further broadband deployments, if larger carrier customers, such as Level 3, are leveraging their size to avoid paying for services rendered. With the proposed transaction threatening to make the combined entity's payment practices even worse, Frontier is concerned that costs of deploying services to rural America will unnecessarily be driven up and the burden of these unreasonable practices will be unfairly borne by rural communities.

Absent conditions aimed at remedying these practices, the Commission should conclude that the proposed transaction will substantially frustrate or impair the Commission's implementation or enforcement of Section 201. In crafting conditions, the Commission should:

- (1) require that CenturyLink and Level 3 be current on all balances greater than 90 days

⁷ See *Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for the Partial Assignment or Transfer of Control of Certain Assets in California, Florida, and Texas*, Memorandum Opinion and Order, 30 FCC Rcd 9812 ¶ 34 (2015).

outstanding; (2) require that Applicants timely resolve all disputes within 180 days; and (3) establish a specific Commission contact for complaints about the Applicants disputing an unreasonable amount of bills and taking an excessive amount of time to respond.

Respectfully submitted,

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February 7, 2017