

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
)	
CenturyLink, Inc.)	
)	
and)	WC Docket No. 16-403
)	
Level 3 Communications, Inc.)	
)	
Consolidated Applications for Consent to)	
Transfer Control of Domestic and International)	
Authorizations Pursuant to Section 214 of the)	
Communications Act of 1934, As Amended)	
_____)	

**JOINT REPLY COMMENTS OF
CENTURYLINK, INC. AND LEVEL 3 COMMUNICATIONS, INC.**

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EXECUTIVE SUMMARY

The record in this proceeding makes clear that CenturyLink's proposed acquisition of Level 3 will result in tangible public interest benefits without any countervailing risk of harm in the provision of enterprise services.

Only two parties—INCOMPAS and the National Congress of American Indians—filed comments in this proceeding. Neither presents a meaningful basis for questioning the public interest benefits of the proposed combination.

INCOMPAS's comments boil down to two contentions: first, that the preliminary methodology used to calculate the effect of the proposed combination on competition for enterprise services is flawed, and second, that the proposed combination will harm competitive carriers if the combined company fails to offer leased access to dark fiber on long-haul routes.

Neither of these contentions is founded. A subsequent, more robust assessment of the landscape for enterprise services that incorporates the "distance/demand" screens embraced by the Commission and the Department of Justice in prior transactions and excludes information derived from online tools provided by cable companies, as well as FCC Form 477 data, confirms that the enterprise markets relevant to the Transaction are and will remain vibrant and competitive post consummation. The updated assessment demonstrates that, at most, 80 buildings within CenturyLink's ILEC region would go from having two competitors to one without a fiber-based competitor within the distance specified by the screens. These buildings would be spread across 23 MSAs, which would not be competitively significant.

The Applicants are continuing to investigate these buildings, which may reduce the number of 2:1 buildings further. In the meantime, the results of this updated assessment are consistent with the outcome of the Applicants' preliminary building assessment, even though the more recent assessment relies only on the presence of other fiber-based competitors. Had the

Applicants also included in their more recent assessment the presence of competitors based on FCC Form 477 data and online tools regarding service availability by cable companies, the number of 2:1 buildings that lack a competitor sufficiently nearby would have been even lower.

As for INCOMPAS's dark fiber claims, they are speculative, unsupported, and contrary to Commission precedent. The Applicants already have demonstrated that their overlapping long-haul fiber routes are competitive, and the Commission rejected a similar contention regarding fiber availability in the context of the Verizon/XO transaction.

NCAI suggests that the Commission should use its review to require the combined company to provide increased service to Tribal lands. Although the Applicants agree that expanding access to broadband services for Tribal lands is important, these concerns are not Transaction-specific and thus are not appropriately considered in this proceeding.

For these and other reasons, the claims made by INCOMPAS and NCAI should be rejected, and the Application should be approved forthwith.

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CenturyLink, Inc. (“CenturyLink”), and Level 3 Communications, Inc. (“Level 3,” and together with CenturyLink, the “Applicants”), by counsel and pursuant to the Commission’s *Public Notice* in the above-captioned proceeding,¹ respectfully submit these reply comments in support of their Application seeking authority to transfer control of Level 3 and its operating subsidiaries to CenturyLink (the “Transaction”).²

As demonstrated in the Application, CenturyLink’s proposed acquisition of Level 3 will result in tangible public interest benefits without any countervailing risk of harm in the provision of enterprise services. To date, each of CenturyLink and Level 3 has had to compete with larger,

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

² As required by Commission rules, the Applicants filed multiple applications in connection with their request to transfer control. Unless otherwise noted, citations herein are to the domestic Section 214 application. *See Level 3 Communications, Inc., Transferor, and CenturyLink, Inc., Transferee, Consolidated Application for Consent to Transfer Control of Domestic and International Authorizations Pursuant to Section 214 of the Communications Act of 1934, as amended*, WC Docket No. 16-403 (filed Dec. 12, 2016). For ease of reference, these reply comments refer to all of the applications collectively as the “Application.”

better-capitalized competitors that have greater national, and in some cases global, reach. By combining their network resources, services, personnel and solutions, CenturyLink and Level 3 together will become a more viable, better-resourced competitor with enhanced service delivery capabilities. Approval of the Transaction therefore is in the public interest.

Only two parties filed comments in this proceeding. Neither presents a meaningful basis for questioning the public interest benefits of the Transaction. INCOMPAS's comments boil down to two contentions: first, that the preliminary methodology used to calculate the effect of the Transaction on competition for enterprise services is flawed,³ and second, that the Transaction will harm competitive carriers if the combined company fails to offer leased access to dark fiber on long-haul routes.⁴

Neither of these contentions is founded. A subsequent, more robust assessment of the landscape for enterprise services that incorporates the "distance/demand" screens embraced by the Commission and the Department of Justice in prior transactions confirms that the enterprise markets relevant to the Transaction are and will remain vibrant and competitive post consummation. As for INCOMPAS's dark fiber claims, they are speculative, unsupported, and contrary to Commission precedent. Applicants already have demonstrated that their overlapping long-haul fiber routes are competitive,⁵ and the Commission rejected a similar contention regarding fiber availability when it was raised less than three months ago in the context of the Verizon/XO transaction.⁶

³ See Comments of INCOMPAS, WC Docket No. 16-403, at 11-12 (filed Jan. 23, 2017) ("INCOMPAS Comments").

⁴ See *id.* at 12-13.

⁵ See Application at B-17 to B-18.

⁶ See *Applications of XO Holdings and Verizon Communications Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 31 FCC Rcd. 12501, ¶ 36 (WCB, IB & WTB 2016) ("Verizon/XO Order").

The only other party to file comments—the National Congress of American Indians (“NCAI”)—suggests that the Commission should use its review to require the combined company to provide increased service to Tribal lands.⁷ Although the Applicants agree that expanding access to broadband services for Tribal lands is important, the concerns raised by NCAI are not Transaction-specific and thus are not appropriately considered in this proceeding.

I. ENTERPRISE SERVICES WILL REMAIN VIBRANT AND COMPETITIVE POST TRANSACTION

A. A More Robust Building Overlap Assessment Confirms Earlier Findings

The initial assessment set forth in the Application concerning the number of buildings into which CenturyLink and Level 3 both own or control fiber facilities (*i.e.*, the “overlap” buildings) demonstrated that the Transaction will not meaningfully diminish competition for the delivery of enterprise services.⁸ Since providing that initial assessment, the Applicants have refined their methodology and collected additional information from a more complete range of data sources to identify more in-building and nearby fiber competitors that are capable of serving the overlap buildings. Although this analysis is ongoing, the work done to date *already fully confirms* the Applicants’ initial assessment.

Specifically, the Applicants refined their methodology for identifying the on-net buildings they have in common, which resulted in the inclusion of additional buildings, and improved their methodology of computing distances between buildings.⁹ These refinements

⁷ See Comments of National Congress of American Indians, WC Docket No. 16-403, at 1-3 (filed Jan. 23, 2017) (“NCAI Comments”).

⁸ See Application at B-19; see also Letter from Yaron Dori, Counsel to CenturyLink, Inc., and Thomas Jones, Counsel to Level 3 Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-403, at 2-4 (filed Dec. 19, 2016) (“CenturyLink/Level 3 Letter of December 19, 2016”). As used herein, the term “owned or controlled” includes fiber held through long-term indefeasible right of use or “IRUs.”

⁹ To account for variances in addressing (*e.g.*, the same building having more than one assigned street address), the Applicants considered a competitor to be present at an overlap building address either where a building’s United States Postal Service Coding Accuracy Support System standardized address was identical to the overlap building address or where the location of the competitor was spatially within 50 meters of the overlap building address. This

resulted in 3,149 buildings within CenturyLink’s ILEC region and 1,366 buildings outside of that region into which both CenturyLink and Level 3 own or control fiber.¹⁰

The Applicants also refined their methodology by incorporating information about the presence of competitors from a more complete range of sources.¹¹ Specifically, for their updated assessment the Applicants collected information regarding in-building and nearby competitors from the following sources: (1) the GeoResults GEOLIT dataset (reflecting data reported for the third quarter of 2016); (2) fiber route and on-net building information made publicly available by each of Cogent, Integra, Windstream, and Zayo, and on-net building information for Lighttower, Lumos, and Unite; (3) CenturyLink’s CLEC database, which includes aggregated lists of on-net locations it receives from its CLEC vendors and other companies from which it purchases access; (4) data from GeoTel Teletracker;¹² (5) Level 3’s competitive intelligence dataset on

is the same approach the Commission endorsed in the recent Business Data Services proceeding. *See Business Data Services in an Internet Protocol Environment*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 4723, 4925-26, App. B, Dr. Marc Rysman, *Empirics of Business Data Services* (Apr. 2016) (describing the Wireline Competition Bureau’s assumption that, in its assembly of location data during the Business Data Services proceeding, BDS connections less than 50 meters apart are located in the same building, unless the postal addresses revealed that they were in distinct buildings).

¹⁰ *Cf.* CenturyLink/Level 3 Letter of December 19, 2016, at 3 (reporting based on their initial methodology that Applicants each own or control fiber into 3,468 of the same buildings within CenturyLink’s ILEC region and into 1,327 of the same buildings outside of that region). As used herein, the term “CenturyLink’s ILEC region” refers to the same service territory described by the Applicants in an earlier submission. *See id.* at n.9 and Attachment A.

¹¹ Relying on multiple data sources to identify the presence of competitors is appropriate where, as here, there is no single comprehensive source for this information. Indeed, both CenturyLink and Level 3 routinely rely on multiple data sources to discern the presence of competitor facilities, either in connection with their own build plans or when looking to lease fiber from others. Applicants in other FCC merger proceedings routinely have relied on similar, multiple data sources in their competitive analyses. *See, e.g.*, Letter from Bryan N. Tramont, Counsel to Verizon Communications Inc., and Thomas W. Cohen, Counsel to XO Holdings, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-70, at 2 (filed Mar. 22, 2016) (relying on on-site examinations and on-net building lists made available online by Zayo, Cogent, Lighttower, Lumos, and FirstLight to determine the presence of competitors); Response to Information and Document Request by Verizon Communications Inc., WC Docket No. 16-70, at 17 (filed July 7, 2016) (explaining that “[u]pon the announcement of its transaction with XO, Verizon conducted an initial competitive overlap analysis using an internal confidential and proprietary database and publicly available data from certain competitors” and that Verizon’s initial findings were refined “[a]fter conducting further analysis using publicly available data from several additional competitors”).

¹² Data from GeoTel Teletracker was used only in connection with overlap buildings within CenturyLink’s ILEC region that were found to lack a fiber-based competitor within 0.1 mile, based upon competitors identified by the GeoResults GEOLIT dataset; publicly available data on the locations of Cogent, Integra, Windstream, and Zayo fiber networks; and CenturyLink’s CLEC database. In some instances, providers identified in Teletracker were excluded from the analysis where the Applicants have not yet confirmed that they are available to serve a particular

third-party providers and their ability to provide access to buildings, compiled in the ordinary course from information received from vendors and companies from which Level 3 purchases access; (6) on-site inspections of individual buildings by CenturyLink and Level 3 field personnel; (7) online tools regarding service availability at specified addresses from other business services providers (which, thus far, has been conducted with respect to Charter, Comcast, Cox, and Time Warner Cable); and (8) FCC Form 477 data reported for the fourth quarter of 2015.¹³

The Applicants organized the resulting information into two categories. Category One reflected the identity and location of competitor facilities based on all eight of these data sources. Category Two reflected the identity and location of competitor facilities based on only the first six data sources. By excluding from Category Two information derived from online tools provided by Charter, Comcast, Cox, and Time Warner Cable, as well as FCC Form 477 data, the Applicants were able to ensure that Category Two data reflected only fiber-based competitors.¹⁴ While the Applicants were prepared to do this at this juncture for purposes of their revised assessment, experience demonstrates that using only Category Two data for the assessment understates the level of competition the Applicants face because it excludes, among other things, the significant volume and quality of business data services (“BDS”) provisioned by cable companies over hybrid fiber-coaxial cable (“HFC”) facilities.

Even so, using only Category Two information, and assuming demand in each building of at least two DS-3 circuits, the Applicants were able to determine that, of the 3,149 overlap

address.

¹³ Only FCC Form 477 filings in which a competitor reported providing a maximum download speed of 100 Mbps or greater were used.

¹⁴ To calculate the distance between the presence of competitors and the overlap buildings, the Applicants relied on the Alteryx Designer and ArcMap spatial analytics programs and used latitude/longitude figures based on the World Geodetic System’s WGS 1984 geographic coordinate system.

buildings within CenturyLink's ILEC region, only 260 lacked another fiber-based competitor in the building or within 0.1 mile of the building. The number was even smaller outside of CenturyLink's ILEC region. Specifically, based on Category Two data, of the 1,366 overlap buildings outside of CenturyLink's ILEC region, only 39 lacked another fiber-based competitor in the building or within 0.1 mile of the building. And when data collected from online tools regarding service availability at specified addresses from other business services providers (described as data item (7) above) were included, the number of overlap buildings outside of CenturyLink's ILEC region declined to only 30.

The Applicants then refined their methodology to account for the demand for enterprise services in each of the 260 Category Two buildings that lack a competitor either in the building or within 0.1 mile of the building.¹⁵ This is because both the Commission and the Department of Justice have in prior transactions concluded that presumptions regarding the likelihood of competitive entry (and thus the ability of a nearby competitor to constrain pricing in a 2:1 building) will depend on the level of demand for services in a building.¹⁶ The greater the demand, they concluded, the greater the distance a competing fiber-based carrier can be from a 2:1 building and still constrain prices in that building.¹⁷ To incorporate this principle into their methodology, the Applicants relied upon building-level demand data from two different sources: (1) Dun & Bradstreet's estimate of total building demand;¹⁸ and (2) CenturyLink data on sales into each building.¹⁹ Using these data in a manner consistent with Commission precedent, the

¹⁵ The Applicants evaluated the demand only for Category Two buildings to keep the assessment focused on fiber-based competitors for now.

¹⁶ See, e.g., *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd. 5662, ¶¶ 42 n.114, 46 (2007) ("*AT&T/BellSouth Order*").

¹⁷ See *id.*

¹⁸ Level 3 in the ordinary course relies on Dun & Bradstreet estimates of total building demand.

¹⁹ For buildings in which demand information was available from more than one source, demand information was taken from the source that showed a higher level of demand.

Applicants removed from the list of 260 Category Two buildings any building with demand equivalent to at least one OC-12 (*i.e.*, 622 Mbps) and a fiber-based competitor within 0.25 mile, or demand greater than the equivalent of an OC-48 (*i.e.*, 2.488 Gbps) and a fiber-based competitor within one mile.²⁰

By determining the location of nearby competitors and applying these demand/distance screens (where demand information was available) to the list of 260 Category Two buildings that lack a competitor within 0.1 mile, the Applicants identified a smaller set of buildings within CenturyLink's ILEC region that would go from having two competitors (*i.e.*, CenturyLink and Level 3) to one (*i.e.*, the combined company) without a fiber-based competitor within the distance specified by the screens.²¹ The Applicants then further refined their analysis for these buildings by incorporating for these buildings two additional data sources into their assessment: Level 3 sales data and service proposals into each of these buildings, and information from FiberLocator about additional competitor facilities in or around each of these buildings.²² Incorporating these additional data sources into the assessment determined that, at most, only 80 buildings within CenturyLink's ILEC region that would go from having two competitors (*i.e.*, CenturyLink and Level 3) to one (*i.e.*, the combined company) without a fiber-based competitor within the distance specified by the screens.

The Applicants are continuing to investigate and refine their building assessment even further, but in the meantime it is clear that the level and extent of the remaining 2:1 building

²⁰ See *id.*; see also *Verizon/XO Order* ¶ 22 n.73 (citing distance/demand screens in *AT&T/BellSouth Order*). It is worth noting that in the Business Data Services proceeding INCOMPAS was prepared to deem competitive all circuits of one Gbps or greater. Letter from Kathleen Grillo, Verizon, and Chip Pickering, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-143, 05-25, at 2 (filed June 27, 2016).

²¹ This set includes some buildings for which the Applicants were not able to identify demand using either the Dun & Bradstreet or the CenturyLink sales data. The Applicants are continuing to investigate other data sources and methods, including physical inspection, to evaluate the status of these buildings.

²² CenturyLink relies in the ordinary course on FiberLocator as a third-party data source.

overlap does not pose a threat to competition. As an initial matter, the Applicants note that this number of remaining 2:1 overlap buildings is consistent with the outcome of their preliminary building assessment, even though the more recent assessment relies only on the presence of other *fiber-based* competitors. Had the Applicants also included in their more recent overlap assessment the presence of competitors based on FCC Form 477 data and online tools regarding service availability by cable companies, the number of 2:1 buildings that lack a competitor sufficiently nearby would have been even lower.

The level and extent of remaining 2:1 buildings also is not competitively significant because these 80 buildings are spread across 23 MSAs. Eighteen of these MSAs each contain four or fewer of these buildings, four MSAs each contain seven to eleven of these buildings, and only one MSA contains more. These are not significant numbers of buildings and would not give the Applicants a meaningful competitive advantage, particularly in light of the competition from cable companies that CenturyLink and Level 3 face today and that the combined company would face post consummation. If anything, these numbers likely *overstate* the number of remaining 2:1 buildings because the data on which they are based *understate* the presence of cable competitors by not including information available in FCC Form 477 filings or on cable company websites. The Applicants anticipate that further investigation into these buildings may yield additional competitors that have not already been identified.

The Applicants did not collect the data necessary to apply distance/demand screens to the 2:1 buildings outside of CenturyLink's ILEC region because they are, by definition, located in regions served by another ILEC presumed to be capable of providing levels of service comparable to those provided by the Applicants. The Commission has held that an ILEC does not have any unique advantage over its competitors when competing outside its incumbent

service region.²³ The same “economic barriers that prevent competitive LECs from providing services over their own facilities also apply to an incumbent LEC competing out-of-region.”²⁴ As previously noted, even if only fiber-based competitors are counted, there are only 39 2:1 buildings outside of CenturyLink’s ILEC region. These data, together with Commission precedent, demonstrate that the Transaction will not meaningfully diminish competition for the delivery of enterprise services to these buildings.

B. Arguments Alleging Flaws in the Preliminary Building Assessment Lack Merit

In its comments, INCOMPAS offers a number of criticisms of the preliminary building assessment presented in the Application. The revised assessment described herein obviates the need to address each and every one of these claims. Indeed, the revised building assessment is consistent with the assessment the Commission utilized in the *Verizon/XO Order*, and INCOMPAS has offered no basis for questioning that approach.

Nevertheless, it is worth clarifying the record with regard to some of INCOMPAS’s assertions. For example, INCOMPAS claims that the GeoResults GEOLIT dataset is not reliable because it does not distinguish between retail providers that own fiber to a building and those that lease fiber.²⁵ It is difficult to see why this distinction would be relevant. The GEOLIT database reflects providers that have lit fiber into a building, so the presence of any such provider would appropriately reflect the presence of a competitor.

INCOMPAS questions the reliability of Level 3 competitive intelligence information based on its assertion that this information cannot be verified by third parties.²⁶ But this information is collected and used by Level 3 *for its own business planning, access purchase,*

²³ *Verizon/XO Order* ¶ 27.

²⁴ *Id.* (citing *AT&T/BellSouth Order* ¶ 55).

²⁵ INCOMPAS Comments at 10.

²⁶ *Id.*

fiber build, and lease decisions, and it is based on information provided directly by third party access providers. If it were not reliable, then Level 3 would not use it in the ordinary course of its business. It stands to reason that it is appropriate for the Commission to consider it here.

INCOMPAS also asserts that the building assessment should not account for FCC Form 477 data,²⁷ the online tools provided by cable companies to identify the buildings for which they provide BDS, or services provided via cable HFC network facilities.²⁸ This concern is irrelevant to the analysis of Category Two overlap buildings provided herein because that analysis excludes Form 477 data, information from cable companies' online tools, and, as a result, services provided via cable HFC network facilities. Nevertheless, it is worth reiterating that such exclusions necessarily understate the level of competition for enterprise services.

FCC Form 477 submissions identify services that service providers themselves assert are available in a particular Census Block. Where the service provider publicly asserts that it offers service of at least 100 Mbps, it is appropriate to consider that provider to be a genuine competitive option for enterprise customers. The relevant question is not whether the competing provider offers precisely the same level of service in the same way as the combined company, but rather whether the competitor's overall offering is sufficiently attractive, along with other available competitive options, to constrain the combined company's pricing power in a given building. Providers of 100 Mbps service in or sufficiently near the relevant building meet this standard. INCOMPAS's criticism that online tools provided by cable companies are "difficult to use" and "may overstate potential coverage to get a prospective customer to call in" also should be dismissed,²⁹ as INCOMPAS has failed to provide evidence to support these claims.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

Nor is there any question that the services provided by cable companies via HFC facilities meet the service demands of a large number of enterprise customers, and accordingly are appropriately treated as competitive. Enterprise customers evaluate competing providers' overall offers, regardless of the specific technology used, and customers already regard the enterprise services provided by cable companies as near substitutes for those provided by traditional telecommunications companies.³⁰ Thus, as long as a cable company provides competitive enterprise services, the precise manner in which it provides such services to the customer (or the specific technology used) should not affect its status as a competitor.

II. LONG-HAUL ROUTES WILL REMAIN COMPETITIVE

As the Applicants have explained, the combined company will face competition from AT&T, Verizon, and Comcast, as well as from numerous other providers with significant long-haul networks.³¹ Moreover, not a single overlapping CenturyLink-Level 3 long-haul route would go from having two competitors to one post Transaction.³² The Transaction therefore poses no threat to competition in the provision of long-haul services. In the face of these facts, INCOMPAS makes the unsubstantiated claim that the Transaction somehow might harm competition in the provision of wholesale dark fiber.³³ This assertion has no merit and should be rejected.

First, there is no basis for treating wholesale dark fiber as a separate product market. In analyzing the relevant product market for transmission services, the Commission assesses the extent to which competitors have deployed network facilities. It does not assess the extent to

³⁰ See Application at B-10.

³¹ *Id.* at B-17 to B-18.

³² *Id.*

³³ INCOMPAS Comments at 12-13.

which competitors offer particular services that can be provided via those network facilities.³⁴

This makes sense because, among other reasons, fiber network facilities can be used to provide a wide variety of lit services as well as dark fiber. INCOMPAS's argument ignores this long-established precedent and should be rejected on this basis alone.

Second, competition in the provision of long-haul services is robust. Longstanding Commission precedent firmly establishes that no provider has the ability to set prices above competitive levels. Accordingly, Level 3 and CenturyLink are presumed to lack market power in the provision of long-haul services today, and the same presumption will apply to the combined company post Transaction.³⁵ This presumption is consistent with marketplace conditions. As the Applicants have explained, there are multiple facilities-based providers of long-haul services throughout the country. The presence of those network facilities disciplines the prices of the full range of lit and dark fiber service offerings. Those prices are further disciplined by the likelihood of future entry if any provider attempted to charge supra-competitive prices. Entry is likely given that barriers to the deployment of long-haul fiber facilities, to the extent that they

³⁴ See *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18290, ¶ 27 n.90 (2005) (declining to analyze separate product markets for different capacities of BDS); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd. 18433, ¶ 27 n.89 (2005) (same).

³⁵ See *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd. 16440, ¶ 72 (2007) (finding BOCs and their independent incumbent LEC affiliates to be non-dominant in the provision of in-region, interstate, long distance services); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61, 12 FCC Rcd. 15756, ¶ 197 (1997) (finding BOCs and independent LECs to be non-dominant in the provision of out-of-region, interstate, domestic, interexchange services). In addition, as a further protection against collaboration among competitors to set prices above competitive levels, retail and wholesale long-haul services are subject to mandatory detariffing. See *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, Second Report and Order, 11 FCC Rcd. 20730, ¶ 3 (1996), *aff'd*, *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

exist, are “far from insurmountable,”³⁶ and service providers have readily overcome them.³⁷

Carriers and customers alike continue to expand long-haul fiber network construction and capacity, pushing prices even lower.³⁸

Finally, the Commission has rejected the assertion that a competitive carrier will cease offering fiber-based services after being acquired by another carrier with ILEC operations. Specifically, in the *Verizon/XO Order*, the Commission held that the combined Verizon/XO will “have an incentive to put [its fiber] facilities to use to provide service and collect revenue.”³⁹ For this reason, it held that there was “little risk” that the combined company would “simply warehouse” fiber, whether dark or lit.⁴⁰ INCOMPAS has offered no reason why the Commission should reach a different conclusion here.

III. POLICY CONCERNS OVER BROADBAND TO TRIBAL LANDS ARE NOT MERGER-SPECIFIC AND SHOULD BE CONSIDERED ON AN INDUSTRY-WIDE BASIS ELSEWHERE

NCAI claims that the Transaction risks lowering the incentive for CenturyLink to

³⁶ See *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 18025, ¶ 42 (1998). In addition, competitors can and do enter by leasing capacity. See *Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd. 3271, ¶ 61 (1995) (“Although facilities-based entry into long-distance requires a substantial initial network investment, resellers have avoided these sunk costs by leasing the excess capacity of existing facilities-based carriers. In addition, some resellers grow to become regional or even national facilities-based competitors[.]”).

³⁷ See, e.g., Press Release, Electric Lightwave, Electric Lightwave Doubles Network Long-Haul Routes, (May 9, 2016), <http://www.electriclightwave.com/news/press-releases/electric-lightwave-doubles-network-long-haul-routes/>; Press Release, Zayo Group, LLC, Zayo Announces New Long Haul Dark Fiber Route from Atlanta to Washington, D.C. (June 2, 2015), <http://www.zayo.com/news/zayo-announces-new-long-haul-dark-fiber-route-from-atlanta-to-washington-d-c-2/>; Press Release, Zayo Group, LLC, Zayo Extends Long Haul Dark Fiber Route from Phoenix to Dallas (Apr. 9, 2015), <http://www.zayo.com/news/zayo-extends-long-haul-dark-fiber-route-from-phoenix-to-dallas-3/>.

³⁸ See TeleGeography Global Bandwidth Research Service, Regional Analysis: United States & Canada, at 3, 5 (2016) (“Carriers throughout the U.S. . . . continue to expand network footprints to deepen coverage and enter new markets. . . . Content providers, hosting companies, and cloud providers have increasingly expanded deployment of long-haul capacity, decreasing their dependence on IP transit. . . . Using their own fiber gives these companies the ability to affordably scale capacity to link their data centers and major interconnection points. . . . U.S. . . . prices for circuits connecting major hubs [and secondary markets] are among the lowest in the world and have eroded steadily over the past few years.”).

³⁹ *Verizon/XO Order* ¶ 36.

⁴⁰ *Id.*

continue to invest in networks that serve Tribal lands and the residential, governmental, education, and medical enterprise customers on those lands.⁴¹ CenturyLink has long provided services in Tribal areas, and, as explained in the Application, the Transaction will strengthen the combined company's incentive and ability to provide services to enterprise customers—including, where applicable, those on Tribal lands—without diminishing the company's non-enterprise services. Indeed, by enhancing the Applicants' combined network facilities, portfolio of product offerings, and responsiveness to service issues, the Transaction will improve the combined company's incentive and ability to expand its reach to more enterprise customers and enable provide competitive services. There is no evidence to the contrary.

NCAI also raises broader concerns about the general availability of broadband access on Tribal lands and suggests that the Commission should use the context of this Transaction to address these concerns.⁴² These concerns are not Transaction-specific and thus are not appropriately considered in this proceeding. Indeed, “the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes,” and thus “generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.”⁴³ CenturyLink has engaged with Tribal

⁴¹ See NCAI Comments at 2-3.

⁴² See *id.* at 3.

⁴³ See *Applications Filed by Altice N.V. & Cequel Corp. d/b/a Suddenlink Communications to Transfer Control of Authorizations from Suddenlink Communications to Altice N.V.*, Memorandum Opinion and Order, 30 FCC Rcd. 14352, ¶18 (WCB, IB, MB & WTB 2015) (“The Commission has rejected requests to impose conditions on applicants in particular transactions solely to serve broad-based policy goals.”); see also *Applications of Cellco Partnership d/b/a Verizon Wireless & Atlantis Holdings LLC*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd. 17444, ¶ 29 (2008) (footnote omitted); *Domestic Section 214 Application Filed for the Transfer of Control of Hawaiian Telcom, Inc. & Hawaiian Telcom Services Co., Inc., Debtors-in-Possession*, Public Notice, 25 FCC Rcd. 13149, 13151 (WCB 2010) (“The Commission generally will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction at issue.”); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses Time Warner Inc., and its Subsidiaries, Assignor/Transferor to Time Warner Cable Inc., and its Subsidiaries, Assignee/Transferee*, 24 FCC Rcd. 879, ¶ 13 (MB, WCB, WTB & IB 2009) (“[T]he Commission has held that it will impose conditions only to remedy harms that arise from the

leaders on the issue of broadband availability, and the combined company expects to continue to do so in the future.

transaction (i.e., transaction-specific harms) and that are reasonably related to the Commission's responsibilities under the Communications Act and related statutes." (footnote omitted)).

CONCLUSION

For the reasons set forth herein and in the Application, the proposed Transaction will serve the public interest by enhancing competition in the enterprise services market, without causing any countervailing harms. The Application therefore should be approved forthwith.

Respectfully submitted

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