

**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).

Application 17-03-016
(Filed March 22, 2017)

**REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES,
THE UTILITY REFORM NETWORK, AND THE GREENLINING
INSTITUTE ON THE PROPOSED DECISION OF ADMINISTRATIVE
LAW JUDGE DEANGELIS**

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October 3, 2017

I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), and The Greenlining Institute (Greenlining) (collectively, Joint Consumer Groups), submit these reply comments to the Opening of Comments of the California Emerging Technology Fund's (CETF) on the Proposed Decision Approving Settlement Regarding Proposed Transfer of Control in the Joint Application (Application) of CenturyLink, Inc. (CenturyLink) and Level 3 Communications, Inc., et al. (Level 3) (collectively, the Joint Applicants) (Proposed Decision). The Joint Applicants seek Commission approval to transfer control of Level 3 Operating Entities to CenturyLink (Proposed Transaction).

The Joint Consumer Groups support the Proposed Decision and Commission approval of the June 30, 2017 Settlement between the Joint Consumer Groups and the Joint Applicants (Settlement). The Proposed Decision properly finds that the terms of the Settlement address the concerns raised in the protests filed in this proceeding and provide substantial public benefits that bring this Proposed Transaction into the public interest. CETF's argument that the Settlement is not in the public interest is without merit and should be rejected. The approved Settlement benefits California consumers through multiple commitments by the Joint Applicants including, concrete network investment, customer protections, reporting requirements, and a commitment to invest in network service quality.

II. DISCUSSION

A. **The Settlement is in the public interest and Joint Consumer Groups considered §854 (b) and (c) when negotiating and agreeing upon the Settlement.**

The Joint Consumer Groups recommended changes to the Proposed Decision to reflect the fact that the Commission has used the public interest criteria in Pub. Util. Code §854 (b) and (c)¹ as guidance in approving mergers even when the Commission is not

¹ All subsequent references to code sections are to the Public Utilities Code.

required to apply those criteria because the parties to the transaction do not meet the stated \$500 million threshold. CETF partially acknowledges this in its Appendix for its proposed language for Finding of Fact 10 which states “While market capitalization and a unique market role is not usually used as a criterion for when to apply § 854 (b) and (c)...” In fact, as the Proposed Decision states, “Prior Commission decisions approving transfers of control did not reference the market capitalization of any of the companies in particular or the concept of market capitalization in any way.”² However, Joint Consumer Groups agree that the Commission should use these statutes as guidance in determining whether this transaction is in the public interest and has done so in the past. Joint Consumers Groups’ opening comments addressed this issue and proposed changes which would ensure that this language is reflected in the Proposed Decision.

Furthermore, Joint Consumers previously explained that the settlement includes a number of terms that satisfy § 854 (b) and (c) in their previous response to CETF’s comments to the motion for approval of the settlement. For example, the Settlement includes terms that will help preserve competition,³ including requirements that the combined company maintain existing enterprise and wholesale contracts through December 2019⁴ and provide notice if it intends to terminate its practice of leasing dark fiber.⁵ Additionally, the Settlement includes terms that will help maintain or improve service to customers,⁶ including requirements that the combined company invest in improving its existing network as well as provide the Commission with improved reporting of service quality issues, network outages, and complaints made to the Federal Communications Commission.⁷ The Settlement also includes terms that will be beneficial to state and local economies by requiring the Joint Applicants to make a

² Proposed Decision at pp. 27-28.

³ See Cal. Pub. Util. Code § 854, subdivision (b)(3).

⁴ Settlement Motion, Exhibit A, Settlement Agreement at p. 6.

⁵ *Id.* at p. 7.

⁶ See Cal. Pub. Util. Code § 854, subdivision (c)(2).

⁷ Settlement Motion, Exhibit A, Settlement Agreement at pp. 6-7.

concrete commitment to California capital expenditures, including a commitment to invest in new middle mile infrastructure and points of presence, focusing on locations where unserved/underserved communities exist, as defined by the California Advanced Services Fund (CASF) program. Joint Consumer Groups were able to obtain this commitment of ongoing capital investment in the state despite Joint Applicants' previously stated plans to spend less on capital expenditures nationwide as a result of the Proposed Transaction.⁸ Without this settlement, there could have otherwise been a decline in investment in the state post-merger. Finally, the Settlement includes terms that will ensure that the transaction is fair and reasonable to affected employees,⁹ including requirements that the combined company report information regarding jobs and diversity efforts.¹⁰

The Proposed Decision acknowledges that the settling parties agree that the commitments in the Settlement satisfy any applicable public interest standard and then concludes that the settlement does indeed satisfy all applicable legal requirements.¹¹ As stated above, Joint Consumer Groups argued in its opening comments that the Commission should clarify that §854 (b) and (c) may be used as guidance in this case and in fact Joint Consumer Groups considered those subsections to arrive at the settlement's terms.

CETF also argues that the settlement is not in the public interest by comparing it to mitigation measures and conditions ordered in other merger proceedings, including network buildout and upgrades.¹² However, all of those proceedings involved merging parties that serve end-user customers. As CETF has previously noted, the transaction in

⁸ <http://www.fiercetelecom.com/telecom/centurylink-plans-to-spend-400m-less-2017-capex-expects-level-3-network-synergies>.

⁹ See Cal. Pub. Util. Code § 854, subdivision (c)(4).

¹⁰ Settlement Motion, Exhibit A, Settlement Agreement at p. 7.

¹¹ Proposed Decision at pp. 25-26.

¹² CETF Opening Comments on the Proposed Decision at p. 8.

this proceeding is significantly different from previous mergers, because the transaction in this proceeding involves two middle-mile providers.¹³

B. It is in the public interest to use a collaborative process to identify projects for the companies' \$323 million in spending on California specific investment.

Although CETF lists numerous objections in the body of its opening comments, its proposed changes to the Proposed Decision's findings of fact and conclusions of law indicate that its main issue with the settlement is that it does not specifically require investment in the types of projects which CETF considers to be in the public interest.¹⁴ Specifically, in addition to the commitments already made by Joint Applicants, CETF lists projects for community anchor institutions and upgraded broadband facilities for public safety organizations, emergency responders, FirstNet, or State-owned county fairgrounds.¹⁵ Joint Consumer Groups note that CETF's proposed changes include the existing settlement term which requires investment in 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 California broadband map.¹⁶ Joint Consumer Groups support a collaborative process rather than prematurely locking in projects because it is a structured, clear, and enforceable process that ensures that only the most suitable projects are selected. Joint Consumer Groups agreed to this process to ensure that it considers changing market conditions over the term of the Settlement and any business uncertainty that may come with the merger. The Settlement will create concrete, real-world public interest benefits, although perhaps not in the form that CETF would have preferred. Additionally, as the Proposed Decision

¹³ CETF Comments on Motion for Settlement at p. 11.

¹⁴ CETF Opening Comments on Proposed Decision, Appendix at pp. 15-16.

¹⁵ *Id.* at 16.

¹⁶ *Id.* at 16.

correctly notes, “it is not necessary to incorporate all of the CETF proposals to satisfy the public interest standard.”¹⁷

III. CONCLUSION

The Joint Consumer Groups urge the Commission to adopt the Proposed Decision with only minor clarifications to the language as discussed in its opening comments. The approved Settlement benefits California consumers through multiple commitments by the Joint Applicants including, network investment, customer protections, reporting requirements, and a commitment to invest in network service quality, and is in the public interest, under any applicable standard.

Respectfully submitted,

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¹⁷ Proposed Decision at p. 30.