

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

*Re: Applications of Level 3 Communications, Inc. and CenturyLink, Inc. For Consent to Transfer Control of Licenses and Authorizations, WC Docket 16-403*

I support this order, which approves the transaction between CenturyLink and Level 3 Communications subject to one condition that is designed to remedy what has been deemed by the agency to be a transaction-specific harm. There are two points particularly relevant to this proceeding.

First, I am gratified that in issuing this item the Commission has taken the opportunity to clarify the standard of review for this and future transactions. For several years now, I have raised concerns that Commission merger orders had ventured into murky -- and potentially illegal -- waters by applying balancing tests and imposing conditions that had no connection to the applications at hand. Therefore, when I was initially presented with a Bureau-level item that contained some of the same problematic language, I joined Commissioner Carr to push that the forthcoming Commission-level order remove this troubling verbiage and focus on the analysis that is actually specified in the law.

Second, this order comes before the full Commission at the request of two Commissioners, in a process similar to one I had previously proposed for use of delegated authority.<sup>1</sup> Specifically, I recommended that if two or more Commissioners request that an item be elevated to the full Commission, the item would be circulated with a commitment to vote the item within days, otherwise the item would be released as approved by a quorum of the Commission. (Alternatively, the Chairman would have the discretion to immediately issue the item on delegated authority.) The process I envisioned was designed to strike a balance between the need to allow Commissioners to have a greater say in the workings of the Commission while preventing process abuses and unnecessary delays.

While the present order is being released at the full Commission level, there was some uncertainty as to whether it would revert back to the Bureau, creating unnecessary delay. In addition, there was much confusion outside of the Commission about the process. There should never be such gamesmanship displayed over Commission items. To remedy this going forward, I recommend that the Commission seek to codify the delegated authority procedure in a manner that reflects the lessons learned over the past two weeks.

I vote to approve.

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<sup>1</sup> See blog post entitled "A Modified Delegated Authority Proposal," February 22, 2017, <https://www.fcc.gov/news-events/blog/2017/02/22/modified-delegated-authority-proposal>.