UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
United States Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 7000
Washington, DC 20530

Plaintiff,

v.

CENTURYLINK, INC.
100 CenturyLink Drive
Monroe, Louisiana 71203

and

LEVEL 3 COMMUNICATIONS, INC.,
1025 Eldorado Boulevard
Broomfield, Colorado 80021

Defendants.

Civil Action No. _______________

COMPLAINT

The United States of America brings this civil action to enjoin the acquisition of Level 3 Communications, Inc. by CenturyLink, Inc. and to obtain other equitable relief.

I. NATURE OF THE ACTION

1. On October 31, 2016, CenturyLink, Inc. ("CenturyLink") and Level 3 Communications, Inc. ("Level 3") entered into an Agreement and Plan of Merger whereby CenturyLink would acquire Level 3. CenturyLink's proposed acquisition of Level 3 would consolidate two of the largest wireline telecommunications services providers in the United States.

2. CenturyLink and Level 3 compete to provide fiber-optic-based connectivity and telecommunications services to enterprise and wholesale customers. Enterprise customers (including all sizes of businesses and institutions, such as community colleges, hospitals, and government agencies) purchase high quality fiber-optic-based connectivity and telecommunications services from CenturyLink and Level 3 for their own telecommunications services needs. Wholesale customers (i.e., telecommunications carriers seeking to provide telecommunications services to customer locations in areas where they do not have their own wireline infrastructure) purchase local network and building-level fiber connectivity from CenturyLink and Level 3 in order to provide telecommunications services to their end-user customers.

3. In three Metropolitan Statistical Areas ("MSAs")[1] – Albuquerque, New Mexico; Boise, Idaho;[2] and Tucson, Arizona – CenturyLink and Level 3 have two of the three most extensive fiber-based metropolitan area networks. Without significant competitors to rival their networks' scale in each of these three MSAs, CenturyLink and Level 3 represent each other's closest competitor for many enterprise and wholesale customers in these MSAs, including, for example, enterprise customers with locations spread throughout an MSA. In many buildings within each of these three MSAs, CenturyLink and Level 3 are the only two providers, or two of only three providers, that own a direct fiber connection to the building. In a substantial proportion of buildings in these MSAs, though CenturyLink and Level 3 may not be connected

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[1] An MSA is a geographical region defined by the Office of Management and Budget for use by federal statistical agencies, such as the Census Bureau. It is based on the concept of a core area with a large concentrated population, plus adjacent communities having close economic and social ties to the core. For the purposes of this Complaint, it includes the dense central business districts in Albuquerque, Tucson, and Boise as well as the adjacent, connected communities.

[2] The full name of this MSA as defined by the Office of Management and Budget is Boise City-Nampa, Idaho.

to these buildings, they are the only two providers with metropolitan area network fiber located close enough to connect economically, making CenturyLink and Level 3 the best options for customers in those buildings. The consolidation of these two competitors thus would likely substantially lessen competition for the provision of fiber-optic-based connectivity and telecommunications services in these three MSAs in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. CenturyLink and Level 3 also own substantial amounts of dark fiber connecting pairs of cities ("Intercity Dark Fiber"). Dark fiber is fiber-optic cable that has been installed, typically in conduit in the ground, but has not been "lit" by attaching optical electronic equipment at each end. Fiber that has had such equipment attached is called "lit" fiber because the equipment sends data through the fiber in the form of light waves. Such lit fiber can rapidly transmit thousands of terabits of data. Owners of Intercity Dark Fiber may "light" the fiber themselves and then use the lit fiber to sell telecommunications services, including data transport, to customers. But only a small handful of Intercity Dark Fiber owners, including CenturyLink and Level 3, also sell the fiber "dark" and permit customers to add their own electronic equipment and control their own data transport. Between some city pairs, CenturyLink and Level 3 are the only two Intercity Dark Fiber providers. Between some other city pairs, CenturyLink and Level 3 are two of only three Intercity Dark Fiber providers.

5. Dark fiber is a crucial input for large, sophisticated customers that need to move substantial amounts of data between specific cities. These customers have specialized data transport needs, including capacity, scalability, flexibility, and security, that can be fulfilled only by Intercity Dark Fiber. CenturyLink and Level 3 compete to sell Intercity Dark Fiber to these customers, and this competition has led to lower prices for and increased availability of Intercity

Dark Fiber. The consolidation of these two competitors would likely substantially lessen competition for the sale of Intercity Dark Fiber for thirty city pairs in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. DEFENDANTS AND THE TRANSACTION

6. CenturyLink is a Louisiana corporation headquartered in Monroe, Louisiana. It is the third largest wireline telecommunications provider in the United States and is the Incumbent Local Exchange Carrier ("ILEC")[3] in portions of 37 states. CenturyLink owns one of the most extensive physical fiber networks in the United States, including metropolitan area network components and direct fiber connections to numerous commercial buildings throughout the United States, particularly where it serves as the ILEC, as well as considerable intercity fiber infrastructure. Over the past ten years, CenturyLink has grown by acquiring a number of other large telecommunications providers, including Embarq Corporation in 2009 and Qwest Communications, Inc. in 2011. As of December 31, 2016, CenturyLink owned and operated a 360,000 route-mile global network, including a 265,000 route-mile U.S. fiber network, and generated 2016 operating revenues of $17.47 billion.

7. Level 3 is a Delaware corporation headquartered in Broomfield, Colorado. It is one of the largest wireline telecommunications companies in the United States and operates as one of the largest Competitive Local Exchange Carriers ("CLEC"), owning significant local network assets comprised of metropolitan area network components and direct fiber connections to numerous commercial buildings throughout the United States, including within portions of CenturyLink's ILEC territory. Level 3 operates one of the most extensive physical fiber

[3] An incumbent local exchange carrier (ILEC) is the telephone company that was the sole provider of local exchange service (local phone service) in a given local area prior to passage of the 1996 Telecommunications Act, which allowed for competitive local exchange carriers (CLECs) to compete for this local service.

networks in the United States, including sizeable intercity fiber infrastructure. Level 3 has made a number of significant acquisitions in the past ten years, including Global Crossing Limited in 2011 and tw telecom inc. in 2014. Level 3 owns and operates a 200,000 route-mile global fiber network and generated $8.172 billion of operating revenues in 2016.

8. On October 31, 2016, CenturyLink and Level 3 entered into an Agreement and Plan of Merger whereby CenturyLink will acquire Level 3 for approximately $34 billion.

III. JURISDICTION AND VENUE

9. The United States brings this action under the direction of the Attorney General and pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain CenturyLink and Level 3 from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

10. CenturyLink and Level 3 are engaged in, and their activities substantially affect, interstate commerce. CenturyLink and Level 3 sell wireline telecommunications goods and services throughout the United States. The Court has subject-matter jurisdiction over this action and these defendants pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

11. Defendants CenturyLink and Level 3 transact business in the District of Columbia and have consented to venue and personal jurisdiction in this District. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b)(1) and (c).

IV. BACKGROUND

12. Wireline telecommunications infrastructure is critical in transporting the data that individuals, businesses, and other entities transmit. Among the key components of this infrastructure are: the fiber strands connecting an individual building to a metropolitan area

network; the fiber strands and related equipment comprising a metropolitan area network that serve an entire city or MSA; and the intercity fiber strands connecting cities to one another.

13. Fiber strands connecting an individual building to the metropolitan area network serving an entire MSA are often referred to as "last-mile" connections. Without a last-mile fiber connection to the building, customers cannot send data to or receive data from any point outside of the building. And without the metropolitan area network to which those last-mile building fibers connect, customers cannot communicate with other buildings in the same MSA or reach any points beyond.

14. These fiber building connections and fiber-based metropolitan area networks carry critical telecommunications services for enterprise customers. They also provide a link over which wholesale providers – who sell services to end users in buildings to which the wholesale provider does not own direct fiber connections – can serve their own customers.

15. Each ILEC has its own territory, which can include entire MSAs and/or portions of MSAs. The ILEC typically has the largest number of fiber building connections in its territory. As such, CenturyLink typically has the largest number of fiber connections to the buildings where it is the ILEC, serving the majority of buildings that require high-bandwidth, high-reliability telecommunications services. CLECs like Level 3 have built fiber connections to buildings in CenturyLink's and other ILEC's territories, giving some buildings additional fiber connections. More recently, other entities like cable companies have begun investing in fiber connections to buildings in certain MSAs, though, like the CLECs, they typically have nowhere near the scale of the ILEC.

16. In the MSAs of Albuquerque, New Mexico; Boise, Idaho; and Tucson, Arizona, CenturyLink is the ILEC and owns the largest and most extensive fiber-based metropolitan area

network, and Level 3 owns one of the top three largest fiber-based networks in all three MSAs. In each of these MSAs, CenturyLink owns fiber connections to more than a thousand buildings, while Level 3 owns connections to hundreds of buildings. In many of these buildings, CenturyLink and Level 3 also control the only last-mile fiber connections. Moreover, they are two of only three significant providers with metropolitan area network fiber nearby.

17. Intercity fiber connects a city's metropolitan area network to other cities' metropolitan area networks. Without fiber connecting cities' metropolitan area networks, each city would be an island, with no way for data sent by or destined for customers in one city to reach to or from any other city. This intercity fiber linking city pairs is distinct from metropolitan area network fiber that links locations within a city but does not connect outside – the only connection between a metropolitan area network and any point beyond is intercity fiber. CenturyLink and Level 3 are two of only a handful of companies with robust nationwide intercity fiber networks.

18. Companies can light intercity fiber to send data across long distances between cities. Intercity Dark Fiber providers can light the fiber themselves, supplying and controlling the optical electronic equipment, and then sell lit services to customers. Intercity Dark Fiber providers can also sell the fiber dark to large, sophisticated customers, in which case the customer purchases the right to control the underlying fiber and then arranges for placement of optical electronic equipment to light the fiber and manages its own traffic on the fiber.

19. Intercity Dark Fiber can provide customers additional data capacity, faster speeds, and more robust security and control over their data networks. Intercity Dark Fiber sales are typically structured as something similar to a long-term lease, known in the industry as an

Indefeasible Right of Use ("IRU"),[4] with an up-front payment and some recurring fees for maintenance of the fiber. Only a few companies in the United States sell Intercity Dark Fiber. Most Intercity Dark Fiber providers also sell lit services, sometimes to the same customer.

V. RELEVANT MARKETS

A. Fiber-Based Enterprise and Wholesale Telecommunications Services Providing Local Connectivity to Customer Premises

20. Fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises constitutes a relevant market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

21. Customers require this product to deliver high-bandwidth, high-reliability telecommunications services. Customers who purchase fiber-based telecommunications services providing connectivity to their premises will not turn to other connectivity technologies (such as hybrid fiber-coax, copper, or fixed or mobile wireless) in sufficient numbers to make a small but significant increase in price of fiber-based telecommunications services unprofitable for a provider of these fiber-based telecommunications services.

22. In some instances, the relevant telecommunications services to individual buildings are priced and sold separately. In other instances, including where MSA-wide price lists are used and where customers have multiple locations throughout an MSA, sales and pricing may be determined at the level of the MSA. Customers with multiple building locations spread throughout an MSA may demand integrated telecommunications services to all locations. Providers with a broad fiber presence in an MSA may be best suited to supply such customers.

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[4] The FCC defines an IRU, in part, as an indefeasible long-term leasehold interest for a minimum total duration of ten years that gives the grantee the right to access and exclusively use specified strands of fiber or allocated bandwidth to provide a service as determined by the grantee. An IRU confers on the grantee substantially all of the risks and rewards of ownership.

For such situations, the nature of competition may be best assessed at the MSA level. The geographic markets relevant to these services are no narrower than each individual building and no broader than each MSA.

23. The relevant geographic markets and sections of the country under Section 7 of the Clayton Act, 15 U.S.C. § 18, within which to assess the competitive impact of a combination of CenturyLink and Level 3 are the MSAs of Albuquerque, New Mexico; Boise, Idaho; and Tucson, Arizona (collectively, the "Three MSAs").

B. Intercity Dark Fiber

24. Intercity Dark Fiber constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act, 15 U.S.C. § 18.

25. Level 3 and CenturyLink utilize their intercity fiber to sell both lit services and Intercity Dark Fiber. Lit services generally are sold for a certain capacity and paid for on a monthly basis. The provider serves the customer using the provider's optical electronic equipment, and the provider manages the traffic on the fiber. In contrast, dark fiber is generally sold through IRUs so that the customer can arrange for its own equipment to be placed and manage its own traffic on the fiber. Customers who buy Intercity Dark Fiber, including webscale companies[5] and financial institutions, require the properties of dark fiber for scalability, capacity, flexibility, and security. Lit services sold by telecommunications providers cannot match these qualities provided by Intercity Dark Fiber and are generally much more costly than Intercity Dark Fiber for these customers' purposes. Customers who purchase Intercity Dark

[5] Webscale companies are those primarily engaged in the business of providing large amounts of data to end users through web-based services; they require facilities and infrastructure to create, store, and then transport that data across long distances.

Fiber will not turn to an alternate service like lit services in the event of a small but significant increase in the price of Intercity Dark Fiber.

26. The geographic markets relevant to this product are specific city pairs in the United States. Intercity Dark Fiber customers generally need to transport data between specific sources and destinations (for example, data centers and headquarters), and accordingly require a fiber connection between cities close to those locations. Customers who face a small but significant increase in price for Intercity Dark Fiber between a specific city pair typically will not substitute different city pairs in response.

27. Further, the directness of the route between cities is critical for purposes of reducing latency and expense. Therefore, Intercity Dark Fiber customers generally will consider only certain routes between a city pair to fulfill their needs. The more circuitous a route, the longer data needs to travel, and the more latency is introduced into the transmission. Longer routes are also more costly to operate as more amplifier and regeneration equipment must be added to the fiber to ensure proper transmission of the signal. Accordingly, only certain routes between a city pair are viable substitutes for Intercity Dark Fiber customers.

28. The relevant geographic markets and sections of the country under Section 7 of the Clayton Act, 15 U.S.C. § 18, within which to assess the competitive impact of a combination of CenturyLink and Level 3 (collectively, the "Thirty City Pairs") are:

1. Atlanta-Nashville
2. Birmingham-Billingsley
3. Charlotte-Atlanta
4. Cleveland-Buffalo
5. Dallas-Memphis
6. Denver-Dallas
7. Denver-Kansas City
8. El Paso-San Antonio
9. Houston-New Orleans
10. Indianapolis-Cincinnati
16. Orlando-Daytona Beach
17. Phoenix-El Paso
18. Portland-Salt Lake City
19. Raleigh-Charlotte
20. Richmond-Raleigh
21. Sacramento-Salt Lake City
22. Sacramento-San Francisco
23. Salt Lake City-Denver
24. San Diego-Phoenix
25. San Francisco-Los Angeles

11. Kansas City-St. Louis
12. Los Angeles-Las Vegas
13. Memphis-Nashville
14. Miami-Jacksonville
15. Nashville-Indianapolis
26. Tallahassee-Jacksonville
27. Tallahassee-Tampa
28. Tampa-Miami
29. Tampa-Orlando
30. Washington, DC-Richmond

VI. ANTICOMPETITIVE EFFECTS

29. The transaction likely would substantially lessen competition in the markets of enterprise and wholesale fiber-based local connectivity telecommunications services in the Three MSAs.

30. Enterprise and wholesale customers in the Three MSAs who depend on fiber-based local connectivity telecommunications services provided by the defendants would be harmed as a result of CenturyLink's acquisition of Level 3. In particular, in addition to wholesale customers, in each of the Three MSAs there are a substantial number of enterprise customers with significant high-bandwidth, high-reliability telecommunications services needs. While some of these customers have a single location, many others have multiple locations throughout the metropolitan area and require telecommunications providers who can offer fiber-based connections to all of their locations. CenturyLink and Level 3 use their metropolitan area networks to compete for customers at locations in the Three MSAs where the two companies already have connected fiber, and to compete for opportunities at new locations throughout the MSAs where CenturyLink and Level 3 could economically add lines to connect to new locations.

31. In each of the Three MSAs, CenturyLink is the largest provider of fiber connectivity and has fiber connections to over a thousand buildings. Level 3 has fiber connections to several hundred buildings in each of the Three MSAs, making it the second largest provider of fiber connectivity to buildings in Albuquerque and Tucson, and one of the top three largest in Boise. In many buildings in the Three MSAs, CenturyLink and Level 3 control

the only last-mile fiber connections. Moreover, they are two of only three significant providers with fiber connections to, or metropolitan area network fiber nearby, buildings in the Three MSAs, representing a customer's best choices for this product in many instances in the Three MSAs. Competitor metropolitan area networks in these Three MSAs that have smaller, less robust networks are not close substitutes for CenturyLink's and Level 3's networks.

32. CenturyLink and Level 3 compete directly against one another to provide fiber-based enterprise and wholesale local connectivity telecommunications services to a wide variety of customers in the Three MSAs, including, but not limited to, small- to medium-sized enterprise customers with one or multiple locations, large multi-regional enterprise customers with branch locations in the Three MSAs, and wholesale customers who resell to all types of end users. Customers have benefitted from this competition, including by receiving lower prices and higher quality services. The acquisition of Level 3 by CenturyLink would represent a loss of this competition.

33. This loss of competition likely will result in increased prices for enterprise and wholesale customers purchasing fiber-based local connectivity telecommunications services in the Three MSAs. In each of the Three MSAs, CenturyLink and Level 3 operate in a highly concentrated market, representing for hundreds of buildings two of only three, and in some cases the only two, providers with fiber connectivity to or near customer premises. While currently these customers can turn to Level 3 if CenturyLink raises prices, the loss of Level 3 as a competitor would leave some customers with only one alternative and many others with no competitive choice at all. Post-merger, these highly concentrated markets will become significantly more concentrated, with the parties' combined share of all last-mile fiber building connections at approximately 90% in Albuquerque, New Mexico; 80% in Tucson, Arizona; and

70% in Boise, Idaho. Without Level 3 as a competitive constraint in these highly concentrated markets, the merged firm will have the incentive and ability to increase prices above competitive levels and reduce quality of service.

34. The transaction likely would also substantially lessen competition for Intercity Dark Fiber for the Thirty City Pairs. Webscale and financial customers who currently rely on Level 3 and CenturyLink to compete for Intercity Dark Fiber sales would be harmed by this transaction. Not all telecommunications providers sell Intercity Dark Fiber. The ability to sell Intercity Dark Fiber requires that a provider control enough fiber for its own operations and have enough remaining to sell the amount requested by the customer, on the route specified by the customer, and for the length of time required by the customer. CenturyLink and Level 3 are two of only a few providers, and in most cases the only two providers, who have this ability and offer to sell Intercity Dark Fiber between each of the Thirty City Pairs. Webscale company customers typically require dark fiber across multiple intercity routes, and they prefer dark fiber providers who can provide them with contiguous routes, including those spanning from coast to coast. CenturyLink and Level 3 are two of only three Intercity Dark Fiber providers with at least one contiguous route from the west coast to the east coast.

35. For the Thirty City Pairs, where competition is so highly concentrated, the acquisition of Level 3 by CenturyLink would represent a loss of crucial competition for customers who require Intercity Dark Fiber. The competition between CenturyLink and Level 3 for Intercity Dark Fiber between these city pairs has led to decreased prices and increased availability, with each defendant being more willing to lower price and offer more Intercity Dark Fiber, or offer Intercity Dark Fiber at all, in response to competitive pressure from the other. Currently, customers can turn to CenturyLink for Intercity Dark Fiber for any of the Thirty City

Pairs if Level 3 raises price or is unwilling to sell Intercity Dark Fiber, but the loss of CenturyLink as a competitor would leave customers with no such option, providing the merged firm the incentive and ability to raise prices above competitive levels.

VII. ABSENCE OF COUNTERVAILING FACTORS

36. Entry of new competitors in the relevant markets is unlikely to prevent or remedy the proposed merger's anticompetitive effects.

37. The proposed merger would be unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that are likely to occur.

VIII. VIOLATIONS ALLEGED

38. The acquisition of Level 3 by CenturyLink likely would substantially lessen competition in each of the relevant markets in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

39. Unless enjoined, the acquisition will likely have the following anticompetitive effects, among others:

a. competition in the market for fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Three MSAs – Albuquerque, New Mexico; Boise, Idaho; and Tucson, Arizona – would be substantially lessened;

b. prices for fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Three MSAs would increase and quality of service would decline;

c. competition in the markets for Intercity Dark Fiber between each of the Thirty City Pairs would be substantially lessened;

d. prices for Intercity Dark Fiber between each of the Thirty City Pairs would increase; and

e. availability of Intercity Dark Fiber between each of the Thirty City Pairs would decrease.

IX. REQUESTED RELIEF

40. The United States requests that this Court:

a. adjudge and decree CenturyLink's acquisition of Level 3 to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

b. permanently enjoin and restrain CenturyLink and Level 3 from carrying out the Agreement and Plan of Merger dated October 31, 2016, or from entering into or carrying out any contract, agreement, plan, or understanding, by which CenturyLink would combine with or acquire Level 3, its capital stock, or any of its assets;

c. award the United States its costs for this action; and

d. award the United States such other and further relief as the Court deems just and proper.

Dated: October 2, 2017

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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