

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CENTURYLINK, INC.,

and

LEVEL 3 COMMUNICATIONS, INC.

Defendants.

Civil Action No. 1:17-cv-02028-KBJ

**MOTION AND MEMORANDUM OF THE UNITED STATES
IN SUPPORT OF ENTRY OF FINAL JUDGMENT**

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), Plaintiff, the United States of America (“United States”), moves for entry of the proposed Final Judgment filed in this civil antitrust proceeding on October 2, 2017, a copy of which is attached hereto as Exhibit A. The proposed Final Judgment may be entered at this time without further hearing if the Court determines that entry is in the public interest. The Competitive Impact Statement (“CIS”), filed in this matter on November 14, 2017, explains why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act, attached hereto as Exhibit B, setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting period has expired.

I. BACKGROUND

On October 2, 2017, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by defendant CenturyLink, Inc. (“CenturyLink”), of defendant Level 3 Communications, Inc. (“Level 3”), likely would substantially lessen competition for fiber-based enterprise and wholesale telecommunications services providing local connectivity in the Tuscon, Arizona, Albuquerque, New Mexico, and Boise City-Nampa, Idaho Metropolitan Statistical Areas (the “three MSAs”) and for the sale of Intercity Dark Fiber connecting thirty city pairs within the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order (“Asset Preservation Order”) and proposed Final Judgment. The CIS, filed by the United States on November 14, 2017, describes how the proposed Final Judgment is designed to remedy the likely anticompetitive effects of the proposed acquisition. The Asset Preservation Order, which was signed and entered by the Court on October 4, 2017, provides in Section IV.A that the proposed Final Judgment may be entered by the Court after the completion of the procedures of the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA requires a sixty-day period for the submission of public comments on a proposed Final Judgment. *See* 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the CIS with the Court on November 14, 2017; published the proposed Final Judgment and CIS in the *Federal Register* on November 24, 2017 (*see* 82 Fed. Reg. 55861-55878); and ensured that a summary of the terms of the proposed Final Judgment, together with

directions for the submission of written comments relating to the proposed Final Judgment, was published in *The Washington Post* for seven days beginning on November 20, 2017, and ending on November 26, 2017. The sixty-day public comment period terminated on January 23, 2018, and the United States received no comments.

Simultaneously with this Motion and Memorandum, the United States is filing a Certificate of Compliance that states that all the requirements of the APPA have been satisfied. It is now appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. STANDARD OF JUDICIAL REVIEW

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

- (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
- (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A), (B). In its CIS, the United States explained the meaning and proper application of the public interest standard under the APPA and now incorporates those provisions of the CIS by reference.

IV. ENTRY OF THE PROPOSED FINAL JUDGMENT IS IN THE PUBLIC INTEREST

The United States alleged in its Complaint that the acquisition of Level 3 by CenturyLink likely would substantially lessen competition for fiber-based enterprise and wholesale telecommunications services providing local connectivity in the three MSAs and for the sale of Intercity Dark Fiber connecting thirty city pairs within the United States, resulting in higher prices for these services and goods. As explained in the CIS, the remedy in the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of this acquisition by requiring defendants to divest Level 3's entire fiber-based metropolitan network and related assets in each of the three MSAs, and to sell Indefeasible Rights of Use for twenty-four strands of dark fiber between each of the thirty city pairs.

The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment as required by law, and no comments have been submitted. There has been no showing that the proposed settlement constitutes an abuse of the United States' discretion or that it is not within the zone of settlements consistent with the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum and in the CIS, the Court should find that the proposed Final Judgment is in the public interest and should enter the Final Judgment without further hearings. The United States respectfully requests that the Final Judgment, attached hereto as Exhibit A, be entered as soon as possible.

Dated: February 8, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Reiter", written over a horizontal line.

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