

**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

JUDGE: Ketanji Brown Jackson

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED
MOTION OF THE UNITED STATES TO APPOINT MONITORING TRUSTEE**

The United States hereby files this Memorandum in support of its motion to appoint Wan J. Kim, Esq., as Monitoring Trustee in this case.

Pursuant to the Amended Final Judgment (“AFJ”) entered by this Court on August 17, 2020 (Dkt. No. 15), the United States may select and apply to this Court for the appointment of a Monitoring Trustee. As described below, Mr. Kim is well-qualified to serve as Monitoring Trustee and to monitor defendants’ compliance with the Amended Final Judgment. The prompt appointment of Mr. Kim will enable him to begin work overseeing the defendants’ compliance with their ongoing obligations under the Amended Final Judgment and will shorten the time until consumers begin experiencing the benefits that this remedy promises to generate.

I. Background

On October 2, 2017, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of Level 3 Communications, Inc. (“Level 3”) by CenturyLink, Inc.

(“CenturyLink”). Dkt. No. 1. The Complaint alleged that the acquisition, as originally proposed, would have substantially lessened competition for (1) the provision of fiber-optic based connectivity and telecommunications services in the Albuquerque, New Mexico; Boise City-Nampa, Idaho (“Boise MSA”); and Tucson, Arizona Metropolitan Statistical Areas (collectively, the “Three MSAs”), and (2) 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. This loss of competition would likely have resulted in increased prices for American consumers.

At the same time the original Complaint was filed, the United States also filed a proposed Final Judgment agreed to by all parties, which was designed to remedy the harm alleged in the Complaint. Dkt. No. 2. The Court entered the Final Judgment on March 6, 2018. Dkt. No. 11. In violation of Paragraph IV.L. of the Final Judgment, CenturyLink’s employees initiated customer-specific communications to customers in the Boise MSA who chose to switch from Level 3 to Syringa, the acquirer of Level 3’s assets pursuant to the Final Judgment. On August 14, 2020, the United States filed a proposed AFJ in which the parties agreed to modifications of the original Final Judgment to ensure that CenturyLink does not commit additional violations of the Final Judgment or of the AFJ. Dkt. No. 14. The Court entered the AFJ on August 17, 2020.

Pursuant to the AFJ, the United States may select and apply to this Court for the appointment of a Monitoring Trustee. AFJ (Dkt. No. 15) at § XVI. The Monitoring Trustee will have “the power and authority to monitor defendants’ compliance” with the terms of the AFJ, and “such other powers as the Court deems appropriate.” AFJ (Dkt. No. 15) at ¶ XVI.B.

II. The Monitoring Trustee's Role and Responsibilities

The Monitoring Trustee will oversee the defendants' progress toward effectuating the purposes of the AFJ, including but not limited to "(1) ensuring that the defendants follow reasonable processes for identifying Covered Customers; (2) ensuring that defendants notify Covered Customers of their rights under Paragraph IV(L);" and "ensuring that defendants comply with Paragraphs IV(K), IV(L), IV(M), and IV(N)" of the AFJ. AFJ (Dkt. No. 15) at ¶ XVI.B.

For example, the Monitoring Trustee will ensure that defendants establish and comply with protocols required by Paragraphs II.G and IV.L of the AFJ related to Covered Customers. Paragraphs II.G and IV.L require defendants to establish reasonable processes for identifying Boise MSA and Majority MSA Customers, as defined by the AFJ, who either (1) notified CenturyLink of their decision to switch their telecommunications services to Syringa, the Acquirer of the Boise MSA Assets, or (2) provide defendants notice that they intend to switch telecommunications services to Syringa and no longer receive any telecommunications services from defendants. Defendants must also establish processes to notify those customers of their rights to switch their telecommunications services to Syringa. AFJ (Dkt. No. 15) at ¶¶ II.G; IV.L.

After appointment, the Monitoring Trustee shall file reports with the United States monthly, or more frequently as needed, setting forth defendants' efforts to comply with defendants' obligations under the AFJ. AFJ (Dkt. No. 15) at ¶ XVI.H. The Monitoring Trustee shall serve until the expiration of the AFJ. AFJ (Dkt. No. 15) at ¶ XVI.I.

III. Wan J. Kim's Qualifications to Serve as Monitoring Trustee

Mr. Kim is highly qualified to serve as Monitoring Trustee in this matter, having served in senior management in public companies and government, as well as a prosecutor and lawyer in private practice. As former Senior Vice President and Deputy General Counsel of Cognizant Technology Solutions, he has a strong background and experience in the development and implementation of company policies and protocols, including effective corporate compliance programs. His government experience includes serving as the Assistant Attorney General for the Civil Rights Division where he was responsible for the enforcement of consent decrees with longstanding compliance obligations, and as Assistant U.S. Attorney for the District of Columbia, where he investigated and prosecuted a wide variety of federal and D.C. criminal violations. He has also been a partner at the law firm of Kellogg, Hansen, Todd, Figel & Frederick, PLLC, specializing in complex civil litigation and investigations. Mr. Kim's years of experience at a Fortune 200 company, in government, and in private practice make him well-equipped to understand corporate compliance programs, as well as to investigate facts as necessary to ensure actual compliance with the requirements of the Amended Final Judgment. Mr. Kim has no conflicts of interest that would disqualify him from fulfilling his role as the Monitoring Trustee in this case.

A professional biography of Mr. Kim is attached.

IV. Conclusion

For the foregoing reasons, the United States respectfully requests that this Court approve the appointment of Wan J. Kim as the Monitoring Trustee pursuant to the Amended Final Judgment.

Dated: October 14, 2020

Respectfully submitted,

/s/

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