

**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. _____

ASSET PRESERVATION STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. DEFINITIONS

As used in this Asset Preservation Stipulation and Order:

A. “Acquirer” or “Acquirers” means the entity or entities to whom defendants divest the Divestiture Assets.

B. “CenturyLink” means defendant CenturyLink, Inc., a Louisiana corporation with its headquarters in Monroe, Louisiana, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Level 3” means defendant Level 3 Communications, Inc., a Delaware corporation with its headquarters in Broomfield, Colorado, its successors and assigns, and its

subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Customer Premises Equipment” means equipment located on the customer premises side of the demarcation point with the telecommunications service provider and used to serve one customer at the location.

E. “Dark Fiber” means fiber optic strands provided without electronic or optronic equipment.

F. “Divestiture Assets” means the MSA Divestiture Assets and the Intercity Dark Fiber Assets.

G. “Divestiture MSA” means, separately, the MSAs of (1) Albuquerque, New Mexico; (2) Boise City-Nampa, Idaho; and (3) Tucson, Arizona.

H. “Gateway Location” means a facility in or near an MSA where intercity fiber terminates and connects with a Metropolitan Area Network and/or other intercity fiber.

I. “Intercity Dark Fiber Assets” means the 24 strands of Dark Fiber in the same cable, if available, or if not available in the same cable, then in the same duct bank, on the Intercity Routes and any Dark Fiber necessary to connect any Intercity Route with another Intercity Route that terminates at a different Gateway Location in the same MSA, to be sold through an IRU. The term “Intercity Dark Fiber Assets” shall be construed as broadly as necessary to accomplish the purposes of the proposed Final Judgment.

J. “Intercity Routes” means Dark Fiber connecting the endpoints specified in Appendix B to the proposed Final Judgment.

K. “IRU” means indefeasible right of use, a long-term leasehold interest that gives the holder the exclusive right to use specified fiber optic strands in a telecommunications facility for a stated term.

L. “Lateral Connection” means fiber optic strands, from the demarcation point in a building, including any equipment at the demarcation point necessary to connect the fiber to Customer Premises Equipment, to the point at which such fiber optic strands are spliced with other fiber optic strands that serve multiple buildings, and any existing related duct, conduit, or other containing or support structure.

M. “Majority MSA Customers” means MSA Customers for which, as of August 2017, Level 3’s monthly recurring revenues were greater in the Divestiture MSAs than outside the Divestiture MSAs.

N. “Metropolitan Area Network” means fiber optic strands that are used to connect Lateral Connections to one another and to Gateway Locations and any existing related duct, conduit, or other containing or support structure.

O. “MSA” means Metropolitan Statistical Area, as defined by the Office of Management and Budget.

P. “MSA Customers” means customers who purchase telecommunications services from Level 3 at a location within any of the Divestiture MSAs, but shall not include the customers listed in Appendix A to the proposed Final Judgment.

Q. “MSA Divestiture Assets” means all Level 3 assets, tangible and intangible, used exclusively or primarily to support Level 3’s provision of telecommunications services to customer locations in the Divestiture MSAs, including, but not limited to, Lateral Connections, Metropolitan Area Network; ownership and access rights to all ducts, conduit, and other

containing or support structure used by Level 3 to operate or augment such Lateral Connections and Metropolitan Area Network; and all switching, routing, amplification, co-location, or other telecommunications equipment used in or associated with those networks in each Divestiture MSA, up to Level 3's Gateway Location(s) in each Divestiture MSA. The MSA Divestiture Assets shall also include other assets used by Level 3 for its provision of telecommunications services to customer locations in each Divestiture MSA, including, but not limited to, all licenses, permits and authorizations related to the MSA Divestiture Assets issued by any governmental organization to the extent that such licenses, permits and authorizations are transferrable and such transfer would not prevent Level 3 from providing telecommunications services in the Divestiture MSAs; all contracts (except as otherwise excluded by the terms of the proposed Final Judgment), teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all MSA Customer lists (including the name of each MSA Customer and each Majority MSA Customer, the address of each MSA Customer location within the Divestiture MSAs, and the address of each Majority MSA Customer location within the Divestiture MSAs and outside the Divestiture MSAs); all repair and performance records relating to the MSA Divestiture Assets; and all other records relating to the MSA Divestiture Assets reasonably required to permit the Acquirer to conduct a thorough due diligence review of and to operate the MSA Divestiture Assets. The MSA Divestiture Assets shall not include assets, wherever located, used exclusively or primarily in or in support of Level 3's provision of telecommunications services outside the Divestiture MSAs. The term "MSA Divestiture Assets" shall be construed as broadly as necessary to accomplish the purposes of the proposed Final Judgment and is subject to the following:

- (1) The MSA Divestiture Assets shall not include Customer Premises Equipment in a location in a Divestiture MSA currently owned by Level 3 unless and until the customer chooses the Acquirer as its supplier pursuant to Section IV(K) of the proposed Final Judgment for that location; and
- (2) Level 3's contracts to provide telecommunications services to customers are not included as MSA Divestiture Assets, but are subject to the process specified in Sections IV(K) and IV(L) of the proposed Final Judgment.

II. OBJECTIVES

The proposed Final Judgment filed in this case is meant to ensure defendants' prompt divestitures of the Divestiture Assets for the purpose of establishing a viable competitor in (1) the provision of telecommunications services in each of the three Divestiture MSAs, and (2) the sale of Dark Fiber to end users on the Intercity Routes, in order to remedy the effects that the United States alleges would otherwise result from CenturyLink's acquisition of Level 3. This Asset Preservation Stipulation and Order ensures that, until such divestitures required by the proposed Final Judgment have been accomplished, the Divestiture Assets will remain as economically viable, competitive, and saleable assets, and that defendants will preserve and maintain the Divestiture Assets.

III. JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV. COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

A. The parties stipulate that a proposed Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after defendants' receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Asset Preservation Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section XI (Compliance Inspection), as though the same were in full force and effect as the Final order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Asset Preservation Stipulation and Order.

D. This Asset Preservation Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Asset Preservation Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Asset Preservation Stipulation and Order, and the making of this Asset Preservation Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. ASSET PRESERVATION PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and take all actions to (1) be able to effectuate the sale of the Intercity Dark Fiber Assets and (2) continue to operate the MSA Divestiture Assets as ongoing, economically viable competitive assets. Within twenty (20) days

after the entry of the Asset Preservation Stipulation and Order, defendants will inform the United States of the steps they have taken to comply with this Asset Preservation Stipulation and Order.

B. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the MSA Divestiture Assets, and shall maintain at 2017 or previously approved levels for 2018, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the MSA Divestiture Assets.

C. Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the MSA Divestiture Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Section V(A).

D. Defendants shall take all steps necessary to ensure that the MSA Divestiture Assets are fully maintained in operable condition, and shall maintain and adhere to normal repair and maintenance schedules for the MSA Divestiture Assets.

E. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer or otherwise dispose of any of the Divestiture Assets.

F. Defendants shall maintain, accordance with sound accounting principles, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the MSA Divestiture Assets.

G. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

H. Defendants' employees with primary responsibility for operations, maintenance, and sales of products and services relating to the MSA Divestiture Assets shall not be transferred

or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to defendants' regular, established job posting policy. Defendants shall provide the United States with ten (10) calendar days' notice of such transfer.

I. Subject to the approval of the United States, defendants shall appoint a person or persons to oversee the MSA Divestiture Assets, who will be responsible for defendants' compliance with this section. This person or persons shall have complete, independent managerial responsibility for the Divestiture Assets, subject to the provisions of the proposed Final Judgment, and shall make, independent of defendants, all business decisions relating to the operations of the MSA Divestiture Assets, including all sales, pricing, marketing, bidding, and discounting decisions. This person may communicate any such decisions to defendants after a contract with a customer is finalized to permit the defendants to support that contract, including, but not limited to, billing the customer. This person may communicate any such decisions to defendants prior to such decisions being finalized if necessary to jointly sell or provide Level 3 service to potential customers seeking services both inside and outside the Divestiture MSAs. In the event any such person is unable to perform his or her duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer or Acquirers acceptable to the United States.

VI. DURATION OF ASSET PRESERVATION OBLIGATIONS

Defendants' obligations under Section V of this Asset Preservation Stipulation and Order shall remain in effect (1) with respect to the Intercity Dark Fiber Assets, until the consummation of the sale of the Intercity Dark Fiber Assets required by the proposed Final Judgment; (2) with respect to the MSA Divestiture Assets, until, separately, the consummation of the divestiture of each Divestiture MSA required by the proposed Final Judgment; or (3) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, defendants are released from all further obligations under this Asset Preservation Stipulation and Order.

Dated: *October 2, 2017*

FOR PLAINTIFF UNITED STATES OF AMERICA

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ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, 2017.

United States District Judge