PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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September 8, 2017 Agenda ID #15977
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 17-03-016:

This is the proposed decision of Administrative Law Judge Regina DeAngelis. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 12, 2017, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ ANNE E. SIMON
Anne E. Simon
Acting Chief Administrative Law Judge

AES:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ DeANGELIS (Mailed 9/8/2017)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Applications of Broadwing Communications, LLC (U5525C); Global Crossing Local Services, Inc. (U5685C); Global Crossing Telecommunications, Inc. (U5005C); IP Networks, Inc. (U6362C); Level 3 Communications, LLC (U5941C); Level 3 Telecom of California, LP (U5358C); WilTel Communications, LLC (U6146C); and Level 3 Communications, Inc., a Delaware Corporation; and CenturyLink, Inc., a Louisiana Corporation, for Approval of Transfer of Control of the Level 3 Operating Entities Pursuant to California Public Utilities Code Section 854(a).	Application 17-03-016

(See Appendix 2 for Appearances)

DECISION APPROVING SETTLEMENT REGARDING PROPOSED TRANSFER OF CONTROL

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DECISION APPROVING SETTLEMENT REGARDING PROPOSED TRANSFER OF CONTROL

Summary

This decision grants Application 17-03-016 and provides the authority for the proposed transaction resulting in the Level 3 Operating Entities[1] and WilTel Communications, LLC (U6146C) to be transferred from Level 3 Communication, Inc. (Level 3) to CenturyLink, Inc. (CenturyLink). The Level 3 Operating Entities are non-dominant, California certificated competitive local exchange and/or non-dominant interexchange carriers providing services exclusively to enterprise and carrier customers. As a result of the transfer, all of Level 3's subsidiaries, including the Level 3 Operating Entities, will become wholly-owned subsidiaries of CenturyLink.[2]

The transfer is approved pursuant to the terms and conditions in the June 30, 2017 Settlement (Appendix 1), which we adopt herein, and pursuant to the October 31, 2016 Agreement and Plan of Merger between CenturyLink and Level 3. In adopting the Settlement, we find that it meets the requirements for approval in that it is reasonable in light of the record, consistent with the applicable law, and in the public interest. As enhanced by the terms and conditions of the Settlement, together with the underlying showing made in the

[1] The Level 3 Operating Entities are as follows: Broadwing Communications, LLC (U5525C), Global Crossing Local Services, Inc. (U5685C), Global Crossing Telecommunications, Inc. (U5005C), IP Networks, Inc. (U6362C), Level 3 Communications, LLC (U5941C), and Level 3 Telecom of California, LP (U5358C).

[2] CenturyLink owns the following three wholly-owned operating subsidiaries in California: CenturyLink Communications, LLC (U5335C), CenturyLink Public Communications, Inc. (U6018C), and CenturyTel of Eastern Oregon, Inc. (U1022C). None of these operating entities is a Joint Applicant in this proceeding.

Application, we conclude that the proposed transaction has merit and should be approved.

Through the transfer of control approved herein, CenturyLink and Level 3 can combine their complementary fiber networks and capabilities on a statewide, national, and international basis. The combined company will be enabled to offer wholesale and enterprise customers a broad range of services that they currently provide individually. Customers will further benefit from the terms and conditions imposed by the Settlement, including among other things, the commitment for California-specific capital expenditures over the next three years of at least $323 million.

Application 17-04-016 is closed.

1. Background

Application (A.) 17-03-016, filed on March 22, 2017, seeks Commission approval pursuant to Pub. Util. Code § 854(a) for the merger of the following telecommunications entities:[3] Broadwing Communications, LLC (U5525C), Global Crossing Local Services, Inc. (U5685C), Global Crossing Telecommunications, Inc. (U5005C), IP Networks, Inc. (U6362C), Level 3 Communications, LLC (U5941C), Level 3 Telecom of California, LP (U5358C), and WilTel Communications, LLC (U6146C) (collectively, Level 3 Operating Entities); CenturyLink, Inc. (CenturyLink); and Level 3 Communications, Inc. (Level 3), the ultimate parent of the Level 3 Operating Entities (collectively referred to as the Joint Applicants).

[3] Unless otherwise noted, all subsequent section references are to the Pub. Util. Code.

The Joint Applicants request Commission approval to transfer control of the Level 3 Operating Entities (each of which is a non-dominant, California certificated competitive local exchange and/or non-dominant interexchange carrier providing services exclusively to enterprise and carrier customers) from Level 3 to CenturyLink. The transfer is to be made pursuant to the Agreement and Plan of Merger between CenturyLink and Level 3 dated October 31, 2016 (Merger Agreement) by which all of Level 3's subsidiaries – including the Level 3 Operating Entities - will become wholly-owned subsidiaries of CenturyLink.

1.1. Participants in the Transfer

1.1.1. CenturyLink

CenturyLink is a publicly traded Louisiana corporation headquartered at Monroe, Louisiana. CenturyLink's operating subsidiaries offer communications services, including local and long-distance voice, local network access, high-speed internet, and information, entertainment, and fiber transport services through copper and fiber networks, to consumers and businesses in 50 states. CenturyLink's operating entities also provide high-speed internet access services and data transmission services. Although CenturyLink itself does not directly offer services in California and is not certificated by this Commission. CenturyLink is the ultimate parent of three entities which are certificated as telecommunications carriers by the Commission.

1.1.2. Level 3

Level 3 is a publicly traded Delaware corporation headquartered in Broomfield, Colorado. Level 3 is a global telecommunications and information services company which, through its operating subsidiaries, offers a wide range of communications services over its broadband fiber-optic network in North and South America, Europe, and Asia, including IP-based services, broadband

transport, collocation services, and patented Softswitch-based voice services. The Level 3 Operating Entities are non-dominant carriers authorized to provide resold and facilities-based telecommunications services pursuant to certification, registration, or tariff requirements, or on a deregulated basis in various states.

1.1.3. Level 3 Operating Entities

Level 3 has seven certificated operating entities in California. These entities provide services to a limited number of enterprise and carrier customers but do not provide service to residential end-user consumers. None of these entities are owned by or affiliated with a California incumbent local exchange carrier.

1.2. Procedural History

On January 17, 2017, each of the Level 3 Operating Entities filed Advice Letters with the Commission to obtain § 854(a) approval of the transfer of control of the Level 3 Operating Entities to CenturyLink pursuant to the process established in Decision (D.) 04-10-038. The Advice Letters filed by Level 3 Operating Entities were protested. Before any response to the protest could be filed by Level 3 Operating Entities, the Commission's Communications Division rejected the Advice Letters.

Then, on March 22, 2017, the Joint Applicants filed this Application seeking approval of the transfer of control of the Level 3 Operating Entities – each of which is a non-dominant carrier that provides service exclusively to wholesale and enterprise customers – from Level 3 to CenturyLink.

On May 5, 2017, the Office of Ratepayers Advocates (ORA), The Utility Reform Network (TURN), and the Greenlining Institute (Greenlining) filed a joint protest to the Application. The California Emerging Technology Fund

(CETF) also filed a protest on May 5, 2017.[4] The Joint Applicants filed a reply to both the joint protest and the CETF protest on May 15, 2017.

A settlement conference was noticed on June 22, 2017, pursuant to Rule 12.1(b) of the Commission's Rules of Practice and Procedure (Rules). On June 30, 2017, a settlement was filed, as attached to the *Joint Motion of the Office of Ratepayer Advocates, The Utility Reform Network, the Greenlining Institute and the Joint Applicants for Approval of Settlement* (Settlement). These parties submitted a contemporaneous *Motion for Expedited Treatment and Order Shortening Time*, requesting that responses, if any, on the Settlement be submitted within 14 days of the filing of this Motion, instead of the 30 days provided by Rule 12.2, and replies, if any, be submitted within five days instead of the 15 provided by the Rule.

CETF was the only party to file a response the Settlement, filing comments in opposition on July 21, 2017. All other parties supported the Settlement. The Joint Applicants responded to CETF's comments on July 25, 2017. ORA, TURN, and Greenlining jointly responded to CETF's comments on July 26, 2017.

The Commission, in Resolution ALJ 176-3396, preliminarily determined that hearings were required in this matter. A prehearing conference was held on August 8, 2017. An Assigned Commissioner's Scoping Memo was issued on August 15, 2017. The Scoping Memo changed this preliminary determination and found that hearings were not needed. The instant decision has been prepared based upon the record submitted in this proceeding.

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[4] CETF is a statewide non-profit organization whose stated mission is to close the Digital Divide in California. CETF studies and addresses the challenges of both "supply" (deployment) and "demand" (adoption) of technologies enabled by broadband.

2. Jurisdiction

The Commission has jurisdiction to approve transfers of control which involve public utilities operating within California, as is requested in this proceeding. Section 851 provides broad Commission authority to approve public utility transfers of control. More specifically, § 854(a) specifies that "[n]o person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The Commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities that are subject to this section of the statute."[5] After the transfer of control is completed, the Commission will retain the same regulatory authority over the Level 3 Operating Entities (as well as the CenturyLink Operating Entities) that it currently possesses.

3. Pre-Settlement Positions

3.1. Joint Applicants - Proposed Transaction

The Joint Applicants seek Commission approval to transfer control of the Level 3 Operating Entities from Level 3 to CenturyLink. All of Level 3's subsidiaries – including the Level 3 Operating Entities - will become wholly-owned subsidiaries of CenturyLink.

On October 31, 2016, CenturyLink entered into a Merger Agreement with Level 3, Wildcat Holdco LLC, a Delaware limited liability company (Holdco), an indirect wholly owned subsidiary of CenturyLink, and two direct subsidiaries of

[5] Pub. Util. Code § 854(a).

Holdco, Wildcat Merger Sub 1, LLC, a Delaware limited liability company, and WWG Merger Sub LLC, a Delaware limited liability company (Merger Sub 2).

In connection with entering into the Merger Agreement, CenturyLink created Holdco, which in turn created two direct subsidiaries of its own, Merger Sub 1 and Merger Sub 2. The Merger Agreement provides, among other things, that subject to the satisfaction or waiver of the conditions set forth therein (i) Merger Sub 1 will merge with and into Level 3, with Level 3 surviving (the Initial Merger), and (ii) immediately thereafter, Level 3 will merge with and into Merger Sub 2, with Merger Sub 2 surviving (the Subsequent Merger and, together with the Initial Merger, the Combination). Following the Combination, Merger Sub 2 (successor to Level 3) will be a direct wholly-owned subsidiary of Holdco, and Holdco will be a wholly-owned direct subsidiary of CenturyLink, Inc. Merger Sub 2 will survive the Subsequent Merger as an indirect wholly-owned subsidiary of CenturyLink. As a result of the Combination, the Level 3 Operating Entities will be indirect, wholly-owned subsidiaries of CenturyLink.

The transaction will be implemented by exchanging shares of stock for cash. Under the Merger Agreement, at the effective time of the Initial Merger, each outstanding share of Level 3 common stock, par value $0.01 per share (the Level 3 Common Stock), other than shares held by holders who properly exercise appraisal rights, will be converted into the right to receive $26.50 in cash, without interest, and 1.4286 shares of CenturyLink common stock, par value $1.00 per share (the CenturyLink Common Stock). Upon the closing of the transaction, CenturyLink shareholders will own approximately 51 percent, and Level 3 shareholders will own approximately 49 percent of the combined company.

The Joint Applicants state they have committed to closing the merger nationwide by the September 30, 2017 and that meeting the closing deadline specified in the Merger Agreement requires completion of various regulatory and operational steps prior to September 30, 2017. The Joint Applicants state that any delay in approval could result in, among other things, substantial financing costs, and further delays in realizing the benefits of the transaction. The transaction is subject to (i) approval and adoption of **t**he Merger Agreement by the stockholders of Level 3 and (ii) approval by the shareholders of CenturyLink of the issuance of the CenturyLink Common Stock in the Initial Merger. The Combination also is subject to other customary closing conditions, including federal and state commission approvals as may be required.

CenturyLink and STT Crossing Ltd. (STT Crossing), which will own approximately 8.6 percent of the CenturyLink Common Stock after the completion of the Combination, also have entered into a Shareholder Rights Agreement, dated October 31, 2016 (the Shareholder Rights Agreement), pursuant to which CenturyLink has agreed to nominate one STT Crossing designee to its board for the first three annual meetings of CenturyLink following the completion of the Combination, unless STT Crossing does not beneficially own at least 85 percent of the CenturyLink Common Stock that it receives at the completion of the Combination.

The current CEO and President of CenturyLink, Glen F. Post, III, will continue in those roles in the post-transaction CenturyLink. Upon completion of the Combination, CenturyLink's current Executive Vice President, Chief Financial Officer and Assistant Secretary, R. Stewart Ewing, Jr., plans to retire. Following his retirement, Sunit Patel, Executive Vice President and Chief Financial Officer of Level 3, will serve as Chief Financial Officer of the combined

company. The executive officers of CenturyLink, other than Mr. Ewing, are expected to continue as executive officers of the combined company.

Because the transaction involves a parent-level transfer of control of the Level 3 Operating Entities, the Level 3 Operating Entities will become wholly-owned indirect subsidiaries of CenturyLink but will otherwise continue to exist as separate certificated carriers with no change in operational structure. The transaction is a combination at the parent company level only, so that no local exchanges, companies, or assets are being sold, combined or transferred to a new provider, and each subsidiary will continue to have the requisite managerial, technical and financial capability to serve its customers.

3.2. Joint Applicants - Position Regarding Section 854(a)

The Joint Applicants seek approval of the transaction pursuant to § 854(a) which requires Commission authorization before a public utility company may "merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state…." The purpose of this and related code sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the proposal and to take such action, as a condition of the transfer, as the public interest may require.[6] Absent prior Commission approval, § 854(a) provides that the transaction is "void and of no effect."

The Joint Applicants assert that the primary question in a transfer of control proceeding under § 854(a) is whether the transaction will be "adverse to the public interest, and that neither § 854(b) nor (c) is applicable to this

[6] *See*, *San Jose Water Co.* (1916) 10 C.R.C. 56.

transaction. Section 854(b) applies to transactions where one of the utilities has gross annual intrastate revenues exceeding $500 million. Section 854(c) applies to transactions where any of the parties to the transaction have gross intrastate revenues exceeding $500 million. In this instance, the Level 3 Operating Entities' annual revenues are less than the $500 million threshold either individually or collectively.

The Joint Applicants argue that the only relevant issue here is whether the proposed indirect transfer of control of the Level 3 Operating Entities to CenturyLink from Level meets the standards required by the Commission, i.e., transfer is not adverse to the public interest, and CenturyLink meets the qualifications to obtain a Certificate of Public Convenience and Necessity (CPCN) in evaluating a § 854(a) application.

The Joint Applicants assert that the proposed transfer will not diminish competition in California but that the Level 3 and CenturyLink Operating Entities are well-placed to continue to offer competitive telecommunications services to enterprise and carrier customers. By integrating their operations, they will also be better able to coordinate network planning and engineering to offer new advanced services and maximize facilities deployment. The operating entities will be able to augment and rationalize existing facilities to further ensure route diversity (thereby increasing security for enterprise and wholesale customers). CenturyLink and Level 3 also will be better able to assure network quality and maintenance standards by relying more on owned fiber and by

reducing overlapping leased facilities or transitions to the owned facilities of the other.[7]

Joint Applicants state that Level 3 Operating Entities will continue to honor their existing contractual and tariff obligations. In addition, the Joint Applicants state that the Commission will retain the same regulatory authority over the Level 3 (and CenturyLink) Operating Entities as existed prior to the transaction.

Since the transfer is a parent-level transaction, customers will experience no changes in day-to-day operations of the regulated entities that operate in California. The Level 3 Operating Entities do not serve residential customers, and therefore the transaction has no direct impact on residential rates in California. Further, the transaction is unlikely to indirectly affect residential rates because, as noted above, the Level 3 Operating Entities will continue to abide by their carrier customer contracts after the transaction. Level 3, however, ultimately does not have any control over the rates that its carrier-customers charge.

Joint Applicants state that the transaction will not have any adverse effect on, and will otherwise be seamless to, the Level 3 Operating Entities' customers – all of whom are enterprise or carrier customers. Level 3 Operating Entities provide telecommunications services to their enterprise and carrier customers through contracts with multi-year terms, typically for one to three years. Some contracts may have terms up to 20 years. These contracts will not be assigned, terminated or otherwise modified due to the transaction. Joint Applicants assert

[7] Information about CenturyLink's and Level 3's fiber route miles and on-net/off-net buildings is provided in Confidential Exhibit K to the Application.

that each of the Level 3 Operating Entities will continue to operate as they do today and provide services under their existing contracts and/or tariffs, and that the customer service, network and operations functions critical to Level 3 Operating Entities' success will continue when the transaction is complete.

3.3. Joint Consumer Groups - Protest

A Protest to the Application was jointly filed by ORA, TURN, and Greenlining (Joint Consumer Groups) on May 5, 2017. The Joint Consumer Groups argued that based on the information provided in the Application, the proposed transaction did not appear to be in the public interest. They argue that the proposed transaction would make CenturyLink one of the largest providers of enterprise and backhaul services in California. The Joint Applicants, particularly the Level 3 Operating Entities, have a strong presence in California with an extensive network, significant infrastructure, and a large number of enterprise and wholesale customers.

The Joint Consumer Groups further argued that the Commission should review the proposed transaction and consider its effects on safety, reliability, network infrastructure, investment, and competition. This transaction will have a direct and significant impact on the availability of backhaul and other wholesale services that are critically important to ensuring a robust marketplace for broadband services as well as many other offerings that ultimately impact all California consumers.

The Joint Consumer Groups proposed that the application be amended to include at a minimum, the following California-specific commitments:

a. **Network infrastructure investment**: The Joint Applicants should commit to investing a certain amount of money in network infrastructure to benefit local economies, including unserved/underserved communities. The Joint Applicants should also commit to building out middle mile infrastructure

and more Points of Presence in their middle mile infrastructure that would benefit unserved/underserved communities, including communities of color, along their existing network to ensure that the merger is providing concrete "short-term and long term economic benefits to ratepayers."

b. **Service quality commitments:** The Joint Applicants should provide more detail in the Network Outage Reporting System reports that they currently file with the Commission. The Commission should review lower reporting thresholds for the outage data of these two companies. Additionally, for both the transport functions and user minutes, the Commission should consider a lower threshold than what is currently required by the Federal Communications Commission (FCC). The threshold could differ for rural parts of the state if necessary. Moreover, these companies should commit to an outage notification process at meaningful thresholds, including specific timeframes for outage notices to customers and local emergency officials of affected communities. If the customer is a wholesale company, then the Commission should require both companies to coordinate the outage notices to ensure all affected customers are informed.

c. **Price commitments**: The Joint Applicants should commit that they will continue to honor commitments for the terms of their contracts even where a change of control may allow the companies to revise the terms of these contracts and not increase rates for their wholesale intrastate tariffs for a specific period of time.

d. **Diversity**: The Joint Applicants should commit to take efforts to increase their executive, workforce, and supplier diversity to accurately reflect the growing diversity of California.

e. **California Employees**: The Joint Applicants should commit to no net job losses in California.

They also argued that the Commission should require further assurances that Level 3 will remain an independent competitive carrier throughout California and will continue to advocate for reasonable and fair access to wholesale inputs offered by incumbent carriers.

3.4. CETF - Protest

CETF filed a separate protest on the same date as did the Consumer Group. CETF argues that Joint Applicants' proposal lacks a concrete public

interest commitment for broadband. CETF argues that the Commission should require enforceable conditions of the merger to enhance broadband infrastructure to address the rural Digital Divide in California. CETF argues California needs state-of-the-art broadband facilities for global competitiveness and economic prosperity. CETF believes that broadband commitments should include collaboration of the Joint Applicants with the Commission's Communications Division Broadband Mapping staff, rural broadband consortia, and other interested stakeholders who represent consumers. CETF argues that the Digital Divide has a direct negative impact on the economic health of rural and remote communities, as noted in the Commission's CASF Annual Report.

CETF argues that CenturyLink should also be required to make enforceable voluntary commitments to build out middle mile facilities and increase rural broadband access, thus helping close the Digital Divide. CETF further argues that the Joint Applicants should be required to work with the Communications Division staff, all emergency response agencies, and FirstNet to see how its infrastructure might assist in improving the basic 9-1-1 emergency communications services. CETF believes the Joint Applicants could voluntarily provide reliability data to the Commission regarding network outages and provide data on its broadband middle mile infrastructure to the Commission's broadband mapping group to improve this Commission's understanding of where middle mile gaps exist for CASF funding purposes.

3.5. Joint Applicants - Consolidated Reply to Protests

The Joint Applicants filed a consolidated reply to the Joint Protest and the CETF Protest on May 15, 2017. Joint Applicants dispute CETF's argument regarding the legal standard for approval of the proposed transfer. Joint

Applicants claim that CETF seeks to impose a new standard for approval by seeking to apply § 854 (b) and (c). Joint Applicants argue that CETF's proposed conditions on approval are inapplicable to a § 854(a) application and ignore the fundamental nature of the Level 3 Operating Entities' operations. Joint Applicants assert nothing in the Protests changes the fact that the basis for the requested approval has been adequately justified pursuant to the Commission's standards and the statutory requirements of § 854(a).

4. The Settlement Process

Subsequent to the filing of protests and Joint Applicants' replies thereto, the Joint Applicants, the Joint Consumer Groups (also referred to as *Consumer Advocates* in the Settlement), and CETF (the only parties to this proceeding) participated in a properly noticed all-party Settlement Conference on June 22, 2017 pursuant to Rule 12.1(b). In that process, the Joint Applicants provided additional information regarding the issues raised by the Consumer Groups including but not limited to confidential materials submitted with the Joint Application. Pursuant to those settlement discussions, a Settlement was reached between the Joint Applicants and the Joint Consumer Groups (together, the Settling Parties). CETF was the only party that did not join in the Settlement but actively contested it.

Settling Parties assert that the Settlement reflects the negotiations to address all concerns raised by the Joint Consumer Groups in this proceeding. This Settlement is the end result of months of discussions and the exchange of information among the Settling Parties to resolve their differences and otherwise address the concerns raised by the Joint Consumer Groups in their Joint Protest (and related issues raised by CETF). Settling Parties assert that the commitments

made by Joint Applicants ensure that the Settlement is reasonable in light of the record, consistent with the law, and in the public interest.

4.1. Terms of the Settlement

Pursuant to the Settlement set forth in its entirety in Appendix 1, hereto, as a condition of approval, Joint Applicants, among other things, commit to:

- Spend at least $323 million in capital expenditures in California to meet customer demand and anticipated need for network expansion and/or upgrades over the next three years (and with no less than $3 million to replace California-specific multiplexer equipment), with a stated "aspirational goal" of investing the committed amount in two years;
- Participate in a collaborative process for identifying and selecting mutually agreeable locations where the companies will invest in new middle mile infrastructure and new points of presence as part of their total California capital expenditures for calendar years 2018-2020, focusing on locations where unserved/underserved communities exist, with enforcement provisions through a Tier 2 advice letter process;
- Preserve the terms of existing customer contracts;
- Create and submit granular reports on synergy savings, broadband projects, employment levels, and network outages; and
- Strive to meet supplier diversity procurement goals that exceed those set forth in General Order 156 with an aspirational goal of 20 percent annual utilization of minority-owned business enterprises, subject to annual meeting and reporting requirements relating thereto.
- Provide reporting of network outages lasting 30 minutes or more that affect California customers, utilizing the Federal Communications Commission's network outage reporting system requirements.
- Provide 90-days advance notice to the Commission of any decision to terminate Level 3's current practice of leasing dark fiber in California to unaffiliated wholesale and enterprise customers.

- Provide notice within 30 days if CenturyLink and Level 3 Operating Entities, individually or collectively, is the subject of any formal FCC investigation or complaint alleging switched access arbitrage.

Based on these commitments, the Consumer Advocates agree that the terms of the Settlement resolve the issues and concerns raised in their Joint Protest. The obligations imposed in the Settlement will take effect after the Joint Applicants' receive all regulatory approvals, including this Commission's approval of the Application for transfer of control, and upon the closing of the underlying transaction.

Although CETF did not join in support of the Settlement, the Settling Parties believe the Settlement addresses the primary concerns in CETF's Protest. The Settlement also provides CETF an opportunity to participate in the process set forth in Commitment 1 therein regarding capital expenditures and facility expansion.

4.2. CETF Opposition

CETF is the only party to oppose the Settlement. CETF claims that the Settlement, as formulated, is not reasonable in light of the record. CETF argues that the Settlement is not consistent with prior Commission communications transfer of control cases where explicit public benefits were made to be conditions of Commission approval and enforceable by the consumer interest groups who secured those benefits.

CETF argues that the proposed transfer requires close Commission review because of the role of Level 3 as one of the few independent, non-incumbent providers of broadband infrastructure in California. CETF argues that the public interest demands the Commission review this acquisition and consider consistent with § 854 (a), (b), and (c) the impacts on the services provided by the

Joint Applicants to this state's broadband infrastructure and on customers who purchase wholesale services from the Joint Applicants.

CETF expresses no specific opinion on a number of the commitment provisions set forth in the Settlement but focuses its objections essentially on the issue of explicit commitments relating to broadband deployment. CETF, in particular, requests a close review of the section of the Settlement entitled, *Investment -- Capital Expenditures*.[8] CETF focuses on the Settlement language requiring Joint Applicants to "aspire to commit the $323 million" in California-specific capital expenditures investment "to meet customer demand and anticipated need for network expansion and/or upgrades by the end of calendar year 2019." CETF argues that the key word, *aspire*, means that the spending of $323 million figure is unenforceable because it is merely *aspirational* by the Joint Applicants. CETF argues that the aspirational goal compared to the concrete commitments obtained in the prior case law is unacceptable.

CETF also takes issue with the total dollar amount proposed in the Settlement for California capital expenditures investment. The total commitment of $323 million, on a per-year basis, means that CenturyLink and Level 3 would invest $107.66 million each year for calendar years 2018, 2019 and 2020. CETF questions why the per year California capital expenditure "aspirational commitment" under the Settlement is significantly lower than 2015 combined annual revenues. On this basis, CETF requests that the capital expenditure investment portion of the Settlement be rejected, claiming that it:

[8] Settlement at 5.

- Is merely aspirational;
- Fails to state adequate criteria for projects;
- Does not provide enough accountability for the Joint Applicants should they fail to perform the obligations in the agreement;
- Does not provide an investment level beyond what is "business as usual;" and
- Does not require explicit Commission approval if there is lack of agreement on projects via a Tier 2 advice letter filing, and is inadequate as to enforcement of the Settlement obligations.

CETF questions how the Settlement will benefit the people of California, and thus CETF requests that $250 million to $300 million in public benefit projects be required according to more specific criteria. In particular, CETF advocates bringing broadband service to unserved and underserved areas of the state as defined by the current California Advanced Services Fund.

Under the Settlement, CETF will be invited to the workshop with the Joint Consumer Groups to identify mutually agreeable projects. CETF objects, however, that it is not part of the decision making group that identifies the locations for the middle mile and Point of Presence projects that may be funded. CETF argues that it makes no sense for it to be excluded from a more defined role in the project identification.

CETF thus requests the Settlement be amended to include CETF in all workshops as a consumer party that will mutually agree with Joint Applicants on projects to satisfy the capital expenditure investment requirement. CETF requests that it receive all progress reports of the Joint Applicants' compliance with the Settlement along with the Joint Consumer Groups. Finally, CETF requests that (1) any Settlement be made a condition of the transfer of control decision, a (2) any party to the Settlement be granted the ability to apply to this Commission for an order to enforce any aspect of the Settlement where the Joint

Applicants have failed to deliver, and (3) that the Joint Applicants consent to the jurisdiction of this Commission to enforce the Settlement.

If CETF is not allowed to participate in the decision making group on project locations, CETF suggests that other state broadband leaders be included in that group such as the U.S. Department of Agriculture Rural Utility Service state broadband coordinator or the State of California's Department of Technology's Assistant Secretary of Broadband and Digital Literacy. Further, CETF is not included as a recipient of the Progress Reports required by the Settlement. CETF requests that it be allowed to obtain these Progress Reports in addition to the Joint Consumer Groups as CETF monitors progress toward the state goal of 98 percent deployment.

CETF also takes issue with the Tier 2 Advice Letter process for approval of project expenditures, as proposed in the Settlement. CETF proposes a Tier 3 advice letter process which requires the Communications Division to prepare a resolution for Commission approval, instead of delegation to the Communications Division staff under a Tier 2 advice letter process. Where the Joint Applicants and the Joint Consumer Groups cannot mutually agreeable on project locations, CETF recommends that the Communications Division (with Commission approval) be involved to ensure the projects are acceptable, the budgets proposed are reasonable, and that Joint Applicants fulfill their public interest commitments. Finally, CETF requests all Settlement commitments be made enforceable conditions of the transfer of control decision.

5. Discussion of Settlement

In considering whether, or under what conditions, the application should be granted, we first take up the issue of whether the Settlement should be adopted. As formulated, the Settlement would resolve all issues in dispute

among the Settling Parties. We recognize, however, that the Settlement is not supported by all parties but is contested by CETF. Accordingly, we consider the objections raised by CETF.

The Commission has long favored the settlement of disputes. This policy supports many worthwhile goals, including reducing litigation costs, conserving scarce resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.[9] In this instance, the Settlement offers parties, as well as the Commission, the opportunity to avoid the expenditure of time and resources otherwise required to litigate parties' disputes. Although we favor settlements, we have specific rules regarding the submission, review, and approval of them.

In evaluating whether to approve the Settlement, we are guided not only by our precedents on settlements, but also by the overall "just and reasonable" standard of the Public Utilities Code.[10] As noted in Rule 12.1(d) of the Commission's Rules of Practice and Procedure, the Commission will not approve a settlement "unless the settlement is reasonable in light of the whole record, is consistent with law, and in the public interest." However, Rule 12.1(a) provides that settlements need not be joined by all parties. The Settlement before us is not an all-party settlement. As noted above, CETF asks the Commission reject the Settlement.

In determining whether a settlement is fair, adequate, and reasonable, the Commission reviews a number of factors. These factors include whether the Settlement reflects the risks, expense, complexity, and likely duration of further

[9] D.05-03-022 at 7-8.

[10] *See*, § 451, which requires that public utility rates "shall be just and reasonable."

litigation; whether it fairly and reasonably resolves the disputed issues and conserves public and private resources; and whether the agreed-upon terms fall within the range of possible outcomes had the parties fully litigated the dispute. The Commission also has considered factors such as whether the Settlement negotiations were at arm's length, whether the parties were adequately represented, and how far the proceedings had progressed when the parties settled.[11]

In consideration of these factors, we conclude that the Settlement before us has merit. We conclude that the Settlement satisfies the requirements of Rule 12.l(d) and that should be adopted without modification as the resolution of all issues in the proceeding. In reaching this conclusion, we have considered the factors noted above, as well as the objections raised by CETF. We conclude, however, that CETF offers no valid reasons to reject the Settlement.

5.1. Reasonableness in Light of the Record

In light of the record that has been developed, we conclude that the Settlement reaches a reasonable resolution. We are not persuaded by CETF claims that the Settlement is unreasonable in light of the record. The Settlement goes beyond the Joint Applicants' original proposal to call for additional commitments and resolves multiple concerns raised by ORA, TURN, and/or Greenlining. The resulting terms and conditions in the Settlement are reasonable in light of the information provided as part of the Application and in the context of settlement discussions.

[11] D.00-11-041 at 6.

This Settlement involves compromises of parties' preferred outcomes. The fact that multiple parties, with divergent interests, reached a mutually acceptable compromise, however, provides evidence that the Settlement is reasonable in light of the record. Even though CETF does not join in the Settlement, the Settling Parties still include the Joint Consumer Groups representing consumer interests. The Settlement addresses the Joint Consumer Groups' concerns by providing discrete benefits to California consumers including, among other things, improved service quality, funding for facility expansion and certainty for enterprise and wholesale customers with existing contracts.

The record was developed through the filing of the Application with supporting materials, filed protests, and responses thereto. The subsequent Settlement resulted from months of discussions with the Joint Consumer Groups during which the Joint Applicants provided information verbally and in response to information requests. The parties submitted almost 100 pages of detailed operational, technical, and financial information as provided to the Joint Consumer Groups (which was also provided to CETF with the Motion to approve the Settlement). The Assigned Commissioner's Scoping Memo issued on August 15, 2017, found that no evidentiary hearings were necessary in light of the existing record.

CETF claims that the record is unduly limited. CETF, however, does not identify specifically what additional information would be needed to evaluate the Settlement or the Application. CETF identifies nothing to indicate the Settlement is unreasonable. Although it does not incorporate all of the provisions that CETF proposed, the Settlement results in a reasonable resolution in light of the record.

In particular, the Settlement provides for commitments on the part of Joint Applicants regarding California-specific investments. The Settlement also provides the opportunity for *all* Protestors to this proceeding, including CETF, to have a role participating in a workshop to identify the projects for such investment and discuss possible locations for expansion. The Commission, as well as participating parties, will also receive significant ongoing information regarding the combined company's operations in California regarding network reliability, outages, diversity procurement, and capital expenditures.

If the Settling Parties cannot agree on an appropriate projects, the Settlement further calls for the Joint Applicants to submit a Tier 2 Advice Letter setting forth an appropriate project for review, comment, and ultimately, approval. The Settlement, therefore, provides a commitment that will be enforceable under the Commission's general authority to enforce compliance with its orders.

Given these considerations, we conclude that the record is sufficient for the Commission to determine the reasonableness of the Settlement and the transfer. We find the Settlement reasonable in light of this record.

5.2. Consistency with Applicable Law

We conclude that the Settlement is consistent with applicable law. The Settlement is consistent with our jurisdictional authority to approve the proposed transfer of control pursuant to § 854(a). We recognize that the Settling Parties did not reach consensus on the particular criteria or commitments *required* by applicable law, and in particular, whether the criteria in § 854(b) and (c) apply. Without waiving their respective positions on relevant legal issues, however, the Settling Parties do agree that the Joint Applicants' representations

as supplemented by the commitments memorialized in the Settlement satisfy any applicable public interest standard.

We disagree with CETF's claim that the Settlement does not provide for enforceability of this capital expenditure commitment but are merely "aspirational." The only aspirational aspect of the Settlement is that the Joint Applicants will attempt to front load the $323 million expenditure over the first two years (i.e., by the end of calendar year 2019), rather than over three years, as the Settlement permits. The Settlement, however, expressly requires that: "Total California capital expenditures for calendar year 2018 through calendar year 2020 combined for CenturyLink and the Level 3 Operating Entities shall be no less than $323 million."[12]

The Commission – and the Joint Consumer Groups - will also receive significant status updates and information regarding the combined company's operations in California regarding outages, diversity procurement, and capital expenditures.

We conclude that the Settlement, including the commitments memorialized therein, satisfy the applicable legal requirements, including the § 854 public interest standard that, among other things, the transfer of control has no adverse impact on the public interest and otherwise provides tangible California-specific benefits. The Settlement provides tangible public interest benefits beyond what the Application offered, addressing concerns raised by the Joint Consumer Groups in a manner that is acceptable both to Joint Applicants and the Joint Consumer Groups. Recognizing Settling Parties' consensus that the

[12] Settlement at 5.

Settlement satisfies any applicable public interest standard, we need not resolve the Settling Parties' legal differences regarding the specific applicability of the criteria in § 854(b) and (c).

In concluding that the Settlement is consistent with applicable law, we recognize that CETF continues to disagree in certain respects. We are not persuaded, however, by CETF's argument that the Settlement is inconsistent with the law because it does not provide the same commitment to deploy broadband in unserved and underserved areas as other similar transactions approved by the Commission.

CETF specifically points to the Frontier acquisition of Verizon's local network and the Charter/Time Warner Cable merger. In requiring deployment of broadband as a condition of approval in those mergers, however, we applied a legal standard that is not comparable to the instant application. The annual California intrastate revenues of these entities were above the $500 million threshold for application of § 854(b) and (c), which require a showing of affirmative public interest commitments. In this proceeding, however, the combined revenues of Joint Applicants are less than half of the $500 million threshold that applies for purposes of § 854(b) or (c). Accordingly, given this revenue level, the combined entities do not constitute a dominant market force, or possess significant market power, and the more rigorous standard of § 854(b) and (c) does not apply.

We also disagree with CETF's claim that the Settlement is not in the public interest because the Joint Applicants' capital expenditure commitment are below a specified percentage of their national and worldwide market capitalization. A parent company's market capitalization is not a recognized criterion for evaluating whether the obligations of § 854(b) or (c) apply. Prior Commission

decisions approving transfers of control did not reference the market capitalization of any of the companies in particular or the concept of market capitalization in any way. Section 854(b) or (c) apply to transactions where one of the utilities and/or one of the parties has annual California intrastate revenues – *not market capitalization* - of $500 million or greater.

5.3. Public Interest Standard

We conclude that the Settlement is in the public interest. In reaching this conclusion, we note that the Settlement goes beyond what the Joint Applicants originally proposed and addresses public interest concerns identified in the Joint Consumer Groups' Protest filed in this proceeding. Based even on the Joint Applicants' original pre-settlement proposal, the transfer of control would be consistent with the public interest to the extent that there would be no interruption of service, no change of tariffs, no transfer of operating authority, no customer transfers, and no elimination of providers. Under the Settlement, additional positive public interest benefits are realized, including the Joint Applicants' commitment to capital expenditures of at least $323 million over the next three years coupled with a collaborative process for identifying and selecting mutually agreeable locations where the companies will invest in new middle mile infrastructure and new points of presence as part of their total California capital expenditures for those years with a focus on locations where unserved/underserved communities exist.

The Settlement also serves the public interest by providing that the Joint Applicants shall strive to meet supplier diversity procurement goals that exceed those set forth in General Order 156 with an aspirational goal of 20 percent annual utilization of minority-owned business enterprises, subject to annual meeting and reporting requirements relating thereto. In this regard, we note,

consistent with the Assigned Commissioner's Scoping Memo that the Settlement does address considerations related to disadvantaged communities.

The Assigned Commissioner's Scoping Memo also raised the question of whether the Settlement raises any safety considerations. By providing commitments relating to capital spending, network reliability, and network outage reporting, we conclude that the Settlement provides enhanced resources to enable each of the operating companies impacted by the transfer of control to continue to provide safe and reliable service.

The capital expenditure commitments and synergies described in the Joint Application, as supplemented with other provisions of the Settlement, will thus bring direct and indirect public interest benefits to California consumers, as noted above. Moreover, adoption of the Settlement will expedite this proceeding and consummation of the underlying Transaction.

We are unpersuaded by CETF's claims that the Settlement fails to satisfy the public interest standard. Although the Settlement is contested by CETF, it nonetheless commands the support of three well known consumer groups that regularly represent public interests. Moreover, the Settlement addresses to some extent CETF's concerns regarding (a) investment in middle mile access infrastructure to last mile Internet Service Providers who desire to provide service to underserved and unserved areas in the State and (b) commitments to help increase broadband facilities in California. The Settling Parties identified only broad categories of public interest projects, but doing so offers maximum flexibility to identify and fund the most suitable projects through a subsequent workshop.

Although CETF describes its expertise in encouraging broadband deployment, it does not show that it is in a better position to determine the

public interest than the Joint Consumer Groups and the Communications Division. Nonetheless, CETF will be able to participate in the post-closing workshop where it may propose public interest projects it believes are suitable for funding. The Settling Parties also agree to CETF's requests in its comments for CETF to receive the same reports that the Joint Applicants will provide to ORA, TURN and Greenlining. Accordingly, we shall incorporate this agreed-upon provision as a condition our decision approving the transfer of control.

Although the Settlement does not incorporate all of the specific measures that CETF advocates, it is not necessary to incorporate all of the CETF proposals to satisfy the public interest standard. CETF highlights a number of statewide goals for further broadband deployment to address the digital divide. Those goals may have merit in the proper forum, but unilaterally imposing such requirements as conditions on this transfer of control goes beyond what § 854(a) requires.

5.4. Summary

We conclude that the proposed transaction should be approved consistent with the terms and conditions of the Settlement, attached as Appendix 1 to this order. For the reasons discussed above, we find that the Settlement is reasonable in light of the record, consistent with the law, and in the public interest. We have considered the objections raised by CETF, but CETF has not provided a convincing basis to reject the Settlement. Accordingly, we adopt the Settlement, and direct the Joint Applicants to abide by its terms as a condition of our approval of the proposed transfer of control. In approving the proposed transaction, we also note that it satisfies other standard Commission requirements, as discussed below.

6. California Environmental Quality Act Requirements

The proposed transfer of control does not constitute a "project" as defined under the California Environmental Quality Act (CEQA), California Public Resources Code, §§ 21000, *et seq.* CEQA applies only to "projects," which are defined as any "activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[13] The CEQA Guidelines provide for an exemption "[w]here it can be seen with certainty that there is no possibility that the proposed active question may have a significant effect on the environment."[14]

We have concluded on numerous occasions that a transaction which simply involves the transfer of equity interests does not require CEQA review because in such circumstances, there is no possibility that granting the application would have an adverse impact. This Application proposes no new construction and, therefore, no possibility exists that the transaction will have a significant adverse impact on the environment.

7. Certificate of Public Convenience and Necessity Requirements

Where a company acquiring control of a certificated telecommunications carrier does not possess a CPCN in California, like CenturyLink, the Commission generally applies the same requirements set forth in §§ 1001 *et seq.* that govern a new applicant seeking a CPCN to exercise the type of authority held by the company being acquired; *e.g.*, requiring a showing of financial resources and managerial expertise.

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[13] *See,* Cal. Pub. Res. Code § 21065.

[14] CEQA Guidelines, § 15061(b)(3).

The Joint Applicants provided information to show that the proposed change in ultimate ownership will not adversely impact its operations or financial status. They have provided information that demonstrates that the acquiring company, CenturyLink, has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier. We conclude that CenturyLink, which is currently the ultimate parent of the three CenturyLink Operating Entities, meets the requisite standards for a CPCN.

8. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____ by _____..

9. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner, and Regina DeAngelis is the assigned Administrative Law Judge. The designated presiding officer is Regina DeAngelis.

Findings of Fact

1. Level 3 is a global telecommunications and information services company which, through its operating subsidiaries (i.e., Level 3 Operating Entities), offers a wide range of communications services over its broadband fiber-optic network. The Level 3 Operating Entities, each of which is a certificated non-dominant carrier in California, provide telecommunications services to enterprise and wholesale customers. The Level 3 Operating Entities do not provide services directly to residential consumers in California.

2. CenturyLink is a publicly traded Louisiana corporation with operating subsidiaries that offer communications services, including local and long-distance voice, local network access, high-speed internet, information, entertainment, and fiber transport services through copper and fiber networks, to consumers and businesses in 50 states.

3. CenturyLink itself does not directly offer services in California and is not certificated by this Commission, but CenturyLink is the ultimate parent of three entities which are certificated as telecommunications carriers in California.

4. On March 22, 2017, the Joint Applicants filed an Application seeking approval of the transfer of control of the Level 3 Operating Entities – each of which is a non-dominant carrier that provides service exclusively to wholesale and enterprise customers – from Level 3 to CenturyLink.

5. Because the proposed transfer of control is a parent-level transaction: (a) retail customers will experience no changes in day-to-day operations of the regulated entities that operate in California; (b) the transaction will be transparent to Level 3's customers as the Level 3 Operating Entities will continue to honor their existing contractual and tariff obligations, and (c) the Commission will retain the same regulatory authority over Level 3 and CenturyLink Operating Entities as existed prior to the transaction.

6. The acquiring company, CenturyLink, has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier. CenturyLink, which is currently the ultimate parent of the three CenturyLink Operating Entities, meets the requisite standards for a CPCN pursuant to Section 1001.

7. The application at issue here proposes no new construction and thus, pursuant to CEQA, there is no possibility that the transaction will have a significant adverse impact on the environment.

8. A settlement conference was noticed on June 22, 2017, pursuant to Rule 12.1(b). On June 30, 2017, a Joint Settlement was filed, as attached to the *Joint Motion of the Office of Ratepayer Advocates, The Utility Reform Network, the Greenlining Institute and the Joint Applicants for Approval of Settlement*.

9. The combined revenues of the Joint Applicants in this proceeding are less than half of the $500 million threshold that applies for purposes of Section 854(b) or (c).

10. Section 854(b) or (c) apply to transactions where one of the utilities and/or one of the parties has annual California intrastate revenues – not market capitalization - of $500 million or greater. Accordingly, a market capitalization criterion is not relevant for purposes of evaluating the reasonableness of capital spending commitment levels as a condition of approval of the application.

11. The Settlement, as identified in Finding of Fact 8, and as set forth in Appendix 1 of this decision, is supported by parties to this proceeding except for CETF.

12. The Settlement satisfies the Commission's standards for approval in that (a) that the Settlement reasonable in light of the record in the proceeding, (b) is consistent with applicable law, and (c) is in the public interest.

13. By providing that the Joint Applicants shall strive to meet supplier diversity procurement goals that exceed those set forth in General Order 156 with an aspirational goal of 20 percent annual utilization of minority-owned business enterprises, the Settlement does address considerations related to disadvantaged communities.

14. By providing commitments relating to capital spending, network reliability, and network outage reporting, the Settlement provides enhanced resources to enable each of the operating companies impacted by the transfer of control to continue to provide safe and reliable service.

15. CETF raises specific objections regarding commitments relating to broadband deployment in a section of the Settlement entitled *Investment -- Capital Expenditures*. CETF, however, identified no specific basis to warrant Commission rejection of the Settlement.

16. The Settlement, as identified in Finding of Fact 8, and as set forth in Appendix 1 of this decision, imposes specific commitments, as detailed therein, committing the Joint Applicants, among other things, to:

- Spend at least $323 million in capital expenditures in California to meet customer demand and anticipated need for network expansion and/or upgrades over the next three years (and with no less than $3 million to replace California-specific multiplexer equipment), with a stated "aspirational goal" of investing the committed amount in only two years, rather than the mandatory three years, as specified therein.
- Participate in a collaborative process for identifying and selecting mutually agreeable locations where the companies will invest in new middle mile infrastructure and new points of presence as part of their total California capital expenditures for calendar years 2018-2020, focusing on locations where unserved/underserved communities exist, with enforcement provisions through a Tier 2 advice letter process.
- Preserve the terms of existing customer contracts.
- Create and submit specified granular reports on synergy savings, broadband projects, employment levels, and network outages.
- Strive to meet supplier diversity procurement goals that exceed those set forth in General Order 156 with an aspirational goal of 20 percent annual utilization of minority-owned business

enterprises, subject to annual meeting and reporting requirements relating thereto.

- Provide reporting of network outages lasting 30 minutes or more that affect California customers, utilizing the Federal Communications Commission's network outage reporting system requirements.
- Provide 90 days advance notice to the Commission of any decision to terminate Level 3's current practice of leasing dark fiber in California to unaffiliated wholesale and enterprise customers.
- Provide notice within 30 days if CenturyLink and Level 3 Operating Entities, individually or collectively, is the subject of any formal FCC investigation or complaint alleging switched access arbitrage.

Conclusions of Law

1. The Application filed herein is governed by § 854(a), whereby no person or corporation may merge, acquire, or control a public utility organized and doing business in California without first securing authorization to do so from this Commission.

2. The purpose of § 854(a) is to enable the Commission to review a proposed transaction before it takes place to take such action as the public interest may require. Where necessary, the Commission may attach conditions to the transaction in order to protect and promote the public interest.

3. The Settlement entered into in this proceeding satisfies Rule 12 requirements in that it is reasonable in light of the record, consistent with law, and is in the public interest.

4. Although CETF did not enter into the Settlement and actively opposed it, CETF did not provide convincing arguments that the Settlement fails to satisfy the Rule 12 requirements.

5. CETF did not show that the Settlement is inconsistent with the Commission's prior actions in considering similarly situated mergers and transfers of control.

6. The terms and conditions set forth in the Settlement are enforceable by the Commission pursuant to its general jurisdictional authority over the public utilities that are subject to the proposed transfer of control.

7. Application 17-03-016 should be approved subject to the terms and conditions set forth in the Settlement set forth in Appendix 1 of this decision.

8. Adoption of the Settlement set forth in Appendix 1 of this decision does not constitute approval of, or precedent regarding, any principle or position that may be taken by any party in a future proceeding, unless otherwise expressly provided by the Commission.

9. With the disposition as ordered herein, Application 17-03-016 should be closed.

O R D E R

IT IS ORDERED that:

1. Application 17-03-016 is approved in accordance with the terms and conditions set forth in the Settlement attached as Appendix 1 of this decision, for authority to transfer control of the following telecommunications entities: Broadwing Communications, LLC (U5525C), Global Crossing Local Services, Inc. (U5685C), Global Crossing Telecommunications, Inc. (U5005C), IP Networks, Inc. (U6362C), Level 3 Communications, LLC (U5941C), Level 3 Telecom of California, LP (U5358C), and WilTel Communications, LLC (U6146C) (collectively, Level 3 Operating Entities); from Level 3 Communications, Inc. (the

ultimate parent of the Level 3 Operating Entities) to CenturyLink, Inc. (all collectively known as the Joint Applicants). The Joint Applicants are required to comply with each of the terms and conditions, as set forth in the Settlement. In addition, the Joint Applicants shall provide the California Emerging Technology Fund with a copy of each of the reports that are to be produced as set forth in the Settlement.

2. The Motion for approval of the Settlement (set forth in Appendix 1 hereto) is granted, as jointly filed by (a) the Joint Applicants, consisting of: Broadwing Communications, LLC (U5525C),Global Crossing Local Services, Inc. (U5685C), Global Crossing Telecommunications, Inc. (U5005C), IP Networks, Inc. (U6362C), Level 3 Communications, LLC (U5941C), Level 3 Telecom of California, LP (U5358C), and WilTel Communications, LLC (U6146C) (collectively the Level 3 Operating Entities); CenturyLink, Inc., (the post-merger ultimate parent of the Level 3 Operating Companies); and Level 3 Communications, Inc., and (b) the Office of Ratepayers Advocates, The Utility Reform Network, and the Greenlining Institute.

3. The Motion of Joint Applicants (i.e., Broadwing Communications, LLC (U5525C), Global Crossing Local Services, Inc. (U5685C), Global Crossing Telecommunications, Inc. (U5005C), IP Networks, Inc. (U6362C), Level 3 Communications, LLC (U5941C), Level 3Telecom of California, LP (U5358C), and WilTel Communications, LLC (U6146C) (collectively the Level 3 Operating Entities); CenturyLink, Inc., (the post-merger ultimate parent of the Level 3 Operating Companies); and Level 3 Communications, Inc.), dated March 22, 2017, to file confidential materials under seal (i.e., Exhibits A, B, I, J, K, L, and Attachment B to Exhibit M) is granted subject to the conditions of Ordering Paragraph 6.

4. The Motion is granted subject to the conditions of Ordering Paragraph 6, to file confidential materials, specifically, Exhibit B to the Motion, filed on June 30, 2017, filed jointly by the Office of Ratepayer Advocates, The Utility Reform Network, the Greenlining Institute, and the Joint Applicants (i.e., Broadwing Communications, LLC (U5525C),Global Crossing Local Services, Inc. (U5685C), Global Crossing Telecommunications, Inc. (U5005C), IP Networks, Inc. (U6362C), Level 3 Communications, LLC (U5941C), Level 3Telecom of California, LP (U5358C), and WilTel Communications, LLC (U6146C) (collectively the Level 3 Operating Entities); CenturyLink, Inc.; and Level 3 Communications, Inc.).

5. The Motion to file confidential information under seal, filed on July 21, 2017, by the California Emerging Technology Fund, is granted subject to the conditions of Ordering Paragraph 6.

6. The designated confidential materials referenced in Ordering Paragraphs 3, 4, and 5, above, shall remain under seal for three years after the date of this order. During this three-year period, the confidential materials shall remain under seal and not be accessible or disclosed to persons other than the Commissioners and Commission staff except on further order or ruling of the Commission, the assigned Administrative Law Judge, or the designated law and motion judge at the time of such ruling. If any interested party believes it is necessary for any of this information to remain under seal longer than three years, that party shall file a new motion stating the justification of further withholding the information from public inspection. That motion shall be filed at least 30 days before expiration of the instant order.

7. All motions granted by the Administrative Law Judge are affirmed. All remaining motions are denied.

8. Application 17-03-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1

Exhibit A

Settlement Agreement Between Joint Applicants and the Consumer Advocates

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of Broadwing Communications, LLC (U-5525-C); Global Crossing Local Services, Inc. (U-5685-C); Global Crossing Telecommunications, Inc. (U-5005-C); IP Networks, Inc. (U-6362-C); Level 3 Communications, LLC (U-5941-C); Level 3 Telecom of California, LP (U-5358-C); WilTel Communications, LLC (U-6146-C); and Level 3 Communications, Inc., a Delaware Corporation; and CenturyLink, Inc., a Louisiana Corporation, For Approval of Transfer of Control of the Level 3 Operating Entities Pursuant to California Public Utilities Code Section 854(a)	)	Application No.17-03-016 (Filed: March 22, 2017)

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement") is entered into as of June 27, 2017, by, between and among, Broadwing Communications, LLC (U-5525-C), Global Crossing Local Services, Inc. (U-5685-C), Global Crossing Telecommunications, Inc. (U-5005-C), IP Networks, Inc. (U-6362-C), Level 3 Communications, LLC (U-5941-C), Level 3 Telecom of California, LP (U-5358-C), and WilTel Communications, LLC (U-6146-C) (collectively the "Level 3 Operating Entities"); CenturyLink, Inc., the post-merger ultimate parent of the Level 3 Operating Companies; and Level 3 Communications, Inc., the current ultimate parent of the Level 3 Operating Entities (all applicants collectively referred to as the "Joint Applicants");

and the Office of Ratepayers Advocates ("ORA"), The Utility Reform Network ("TURN") and the Greenlining Institute ("Greenlining") in accordance with Rule 12 of the California Public Utilities Commission's ("Commission or CPUC") Rules of Practice and Procedure ("Rules"). ORA, TURN and Greenlining are referred to herein individually and collectively as the "Consumer Advocates." The Joint Applicants and the Consumer Advocates are collectively identified as the "Parties" to this Settlement.

All the terms of this Settlement are expressly contingent upon the consummation of the transaction set forth in the October 31, 2016 Agreement and Plan of Merger identified in the above-referenced Joint Application for Approval of Transfer of Control of Level 3 Operating Entities Pursuant to Public Utilities Code Section 854(a) dated March 22, 2017 (the "Transaction").

This Settlement reflects additional commitments that the Joint Applicants have agreed to make provided that the Transaction is consummated, and it reflects the Consumer Advocates' agreement that, based on those commitments by Joint Applicants, the concerns expressed in Consumer Advocates' May 5, 2017 Protest to the Joint Application regarding the Transaction have been resolved.

The Parties agree that this Settlement represents a compromise of all disputes between the Parties and is (i) fundamentally fair and reasonable in the light of the whole record, (ii) consistent with the law, (iii) in the public interest.

I. RECITALS

WHEREAS, this proceeding was initiated through the Joint Application filed on March 22, 2017 by the Joint Applicants;

WHEREAS, the Level 3 Operating Entities, each of which is a certificated non-dominant carrier in California, provide telecommunications services to enterprise and wholesale customers;

WHEREAS, the Level 3 Operating Entities do not provide services directly to residential consumers in California

WHEREAS, Level 3 Communications, Inc. is the ultimate parent corporation of the Level 3 Operating Entities;

WHEREAS, CenturyLink, Inc. has three wholly-owned operating subsidiaries in California, none of whom are applicants but all of whom are described in more detail in the Joint Application;

WHEREAS, CenturyLink, Inc., by and through (a) one of its wholly-owned subsidiaries, CenturyLink Communications, LLC, a non-dominant telecommunications provider certificated in California that provides, among other things, telecommunications services to enterprise and wholesale customers, and (b) the Level 3 Operating Entities, commits to fulfill the terms of the Agreement set forth below in Section II;

WHEREAS, none of these entities are owned or affiliated with a California incumbent local exchange carrier;

WHEREAS, none of the California-certificated entities has annual California revenues, either individually or collectively, equal to or exceeding $500 million;

WHEREAS, the Parties expect the closing of the transaction to take place by the end of the third quarter of 2017;

WHEREAS, the Consumer Advocates filed a joint protest to the Application on May 5, 2017;

WHEREAS, the Joint Applicants provided a reply to the timely-received protests on May 15, 2015;

WHEREAS, the Parties have met regularly to discuss a possible negotiated settlement of the concerns raised by the Consumer Advocates in their Joint Protest;

WHEREAS, as part of the Settlement, the Joint Applicants - by and through CenturyLink Communications, LLC and the Level 3 Operating Entities - have committed to a certain level of capital expenditures in California over the next three years including a collaborative process for identifying and selecting potential projects in underserved and unserved areas, multiplexer replacement expenditures, contracting continuity, enhanced outage reporting obligations, increased diversity procurement goals and various reporting requirements as set forth in detail below; and

WHEREAS, the Parties have reached the terms of a settlement that the Parties believe is in the public interest, reasonable in light of the record, and consistent with the law, as set forth herein.

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II. AGREEMENT

NOW, THEREFORE, based upon mutual agreement reflected in this Settlement, as detailed below, the Joint Applicants, by and through CenturyLink Communications LLC ("CenturyLink") and the Level 3 Operating Entities, and the Consumer Advocates agree to resolve issues raised by the Consumer Advocates. Unless specifically noted, unserved and underserved areas in California are areas as defined by the California Advanced Services Fund (D.12-02-015), as of the date of this Settlement Agreement.

Investment – Capital Expenditures

1. Total California capital expenditures for calendar year 2018 through calendar year 2020 combined for CenturyLink and the Level 3 Operating Entities shall be no less than $323 million. CenturyLink and the Level 3 Operating Entities will aspire to commit the $323 million in California capital expenditures investment to meet customer demand and anticipated need for network expansion and/or upgrades by the end of calendar year 2019. CenturyLink and the Level 3 Operating Entities will work with the CPUC Communications Division, TURN, ORA, and Greenlining, to identify mutually agreeable locations where the companies will invest in new middle mile infrastructure and new points of presence as part of their total California capital expenditures for calendar years 2018-2020, focusing on locations where unserved/underserved communities exist. A workshop with these stakeholders and other Protestors to this proceeding, to discuss possible locations for expansion must be held no later than four months from the date of the closing of the transaction. Parties to this Agreement agree to schedule subsequent workshops if necessary. If parties to this Settlement Agreement have not identified mutually agreeable locations for middle mile and point of presence projects by June 30, 2018, CenturyLink and the Level 3 Operating Entities will submit a Tier 2 Advice Letter to the Commission by September 1, 2018 with proposal[s] for project[s] that meet the criteria set forth in this Settlement Agreement. The proposal[s] shall include a detailed description of the project[s] and budget[s] for the project[s].

2. Reporting: CenturyLink and the Level 3 Operating Entities will jointly provide confidential detailed bi-annual progress reports to the CPUC's Communications Division Director, ORA, TURN and Greenlining identifying the progress made on the total California capital expenditures for calendar years 2018 through 2020 by no later than September 1st for the months January through June of the same year; and by no later than March 1st for the months July through December for the preceding year. The progress reports will be broken out by investment category and geographic location. For each middle mile and points of presence project, the progress report will include the budget, expenditures spent on each of these projects, and the work completed during that reporting period.

Investment - Network Reliability

3. CenturyLink and the Level 3 Operating Entities shall spend no less than $3 million of the total California investment commitment for the period covering calendar year 2018 through 2020 to replace multiplexer equipment in the network serving California. The replacement of multiplexer equipment will include, but will not be limited to, locations that have experienced a higher number of multiplexer outages prior to the merger transaction that the parties to this agreement have previously identified.

4. Reporting: CenturyLink and the Level 3 Operating Entities will jointly provide a confidential annual progress report to ORA, TURN and Greenlining of the actual expenditures spent to install new multiplexer equipment during each calendar year from 2018 through 2020 by no later than March 1st of the following calendar year when those expenditures were made. The progress report shall include the number of multiplexer replacements completed and the location (geographic area such as city/community) of the replacement. These reports shall also include a list of the five locations experiencing the highest number of multiplexer outages during the period covered by the report. The term "outages" shall be consistently and clearly defined in the report.

Existing Contracts

5. For the period of time starting with the date of the closing of the transaction through December 2019, CenturyLink and all Level 3 Operating Entities shall not seek to terminate or materially revise any California enterprise or wholesale existing contract after the merger closes solely as a result of the merger. This provision shall not prohibit contract terminations for reasons unrelated to the merger, mutual agreements to terminate or revise contracts, nor customers from voluntarily electing to terminate their contracts pursuant to contractual provisions.

Reporting of Synergy Savings and Integration; including Employee Related

6. CenturyLink and the Level 3 Operating Entities will jointly provide an annual California-specific synergy savings and integration report to ORA, TURN and Greenlining as of December 31 for the respective years 2017, 2018, and 2019 by no later than March 1st of the following calendar year. These reports will include the total number of California employees by corporate entity as of the closing date of the merger transaction, and then as of the end of each calendar year 2017 through 2019.

7. CenturyLink and the Level 3 Operating Entities will annually report its supplier diversity for all of its California operations to the CPUC as set forth in the Commission's General Order 156 and have an aspirational goal of 20% annual utilization of minority-owned business enterprises ("MBEs") as described in General Order 156. CenturyLink and the Level 3 Operating Entities' designated representative will conduct an annual meeting with ORA, TURN and Greenlining (and the CPUC's Communications

Division if it so desires) to discuss the annual 2018 and 2019 supplier diversity CPUC reports.

Network Outage Reporting

8. For the period of time starting with the date of the closing of the transaction through December 2019, CenturyLink will provide outage reporting by email to the CPUC's Communications Division Director, ORA, TURN and Greenlining for network outages lasting 30 minutes or more that affect California customers. The reports will follow the FCC's NORS system for determining whether end users are affected and DS3/OC3 transport outages except that the threshold for this report will require the company to report outages lasting 30 minutes or more that affect 90,000 user minutes and report all DS3/OC3 outages of at least 30 minutes duration that affect at least 150 DS3 minutes until February 2018 and 150 OC3 minutes from February 1, 2018 through December 2019.

9. The Level 3 Operating Entities' reporting systems are not currently configured to report at a lower threshold than the FCC standards for NORs purposes. Until outage management reporting is integrated, the Level 3 Operating Entities will provide a joint bi-annual report to the CPUC's Communications Division Director, ORA, TURN and Greenlining that summarizes outages based on the lower threshold identified above. The reports will be submitted for the period of time starting with the date of the closing of the transaction through December 2019 by no later than September 1st for the months January through June of the same year; and no later than March 1st for the months July through December for the preceding year.

Reporting – Leasing Dark Fiber

10. For the period of time starting with the date of the closing of the transaction through December 2019, CenturyLink and the Level 3 Operating Entities will provide the Commission with 90 days-notice if a decision is made to terminate Level 3's current practice of leasing dark fiber in California to unaffiliated wholesale and enterprise customers. CenturyLink and the Level 3 Operating Entities shall provide notice to the Commission via a Tier 1 Advice Letter filing.

Reporting – FCC Complaints/Investigation

11. For the period of time starting with the date of the closing of the transaction through December 2019, CenturyLink and the Level 3 Operating Entities agree that they will provide the CPUC's Communications Division Director, ORA, TURN and Greenlining with notice within thirty (30) days if any of them, individually or collectively, is the subject of any formal FCC investigation or complaint alleging switched access arbitrage.

Reporting – CPUC Communications Division

12. CenturyLink and the Level 3 Operating Entities will provide any and/or all of the reports identified above in Paragraphs 4 and 6 to the CPUC's Communications Division upon request.

The Parties will file a Joint Motion seeking Commission approval of the Settlement in its entirety and without change.

The Parties agree to use their best efforts to obtain Commission approval of the Settlement and will not oppose its adoption in any way. The Parties will request that the Commission approve the Settlement without change and find the Agreement to be reasonable, consistent with the law and in the public interest. The Parties will take all reasonable actions to support the adoption of this Settlement on an expedited basis in order to meet the closing deadline anticipated by the Transaction.

This Settlement is being presented as an integrated package such that Parties are agreeing to this Settlement as a whole, as opposed to agreeing to specific elements to this Settlement. If the Commission adopts this Settlement with modifications, all Parties must consent to the modifications or any Party may void this Settlement, but only after such Party provides the other Parties to the agreement with the opportunity to meet and confer in good faith regarding the proposed modifications.

This Settlement was jointly prepared by all of the parties to the Settlement and any uncertainty or ambiguity existing in the document will not be interpreted against any party on the basis that such party drafted or prepared the Settlement.

By signing below, each of the undersigned represents and warrants that he/she is authorized to sign this Settlement on behalf of the party for whom he/she signs and thereby binds such party to the terms of this Settlement.

This Settlement constitutes and represents the entire agreement between the parties and supersedes all prior and contemporaneous agreements, negotiations, representations, warranties and understandings of the parties with respect to the subject matter set forth herein.

The Parties agree that the Commission's adoption of this Settlement should not be construed as an admission or waiver by any Party regarding any fact, matter of law, or issue thereof that pertains to the subject of this Settlement. Further, the Parties agree that the obligations set forth in this Settlement are without prejudice to positions each Party has taken, or may hereafter take, in any proceeding in another state, or in any proceeding at the Commission. In accordance with the Commission's Rules of Practice and Procedure, Rule 12.5, the Parties intend that the Commission's adoption of this Settlement be binding on each Party, including its legal successors, predecessors, assigns, partners, joint ventures, shareholders, members, representatives, agents, attorneys, parent or subsidiary companies, affiliates, officers, directors, and/or employees. Adoption of this Settlement does not constitute approval of, or precedent regarding, any principle or position taken in any future proceeding, unless the Commission expressly provides otherwise.

If a Party fails to perform its respective obligations under this Settlement, after reasonable notice and opportunity to cure its default, any other Party may come before the Commission to pursue a remedy including enforcement. The Parties acknowledge that the Commission may assert jurisdiction to enforce the terms and conditions of this Settlement.

This Settlement may be amended or changed only by a written agreement signed by all parties and approved by the Commission.

This Settlement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

This Settlement Agreement may be executed in one or more counterparts, and each of which when so executed and delivered will be an original and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement to be effective as of the date shown above.

Office of Ratepayer Advocates

June ___, 2017

By:_____
Its:_____

The Utility Reform Network

June ___, 2017

By:_____
Its:_____

The Greenlining Institute

June ___, 2017

By:_____
Its:_____

CenturyLink, Inc.

June ___, 2017

By:_____
Its:_____

June 29, 2017

Level 3 Communications, Inc.

By: _____
Its: EVP

June 29, 2017

Broadwing Communications, LLC (U-5525-C)

By: _____
Its: EVP

June 29, 2017

Global Crossing Local Services, Inc. (U-5685-C)

By: _____
Its: EVP

June 29, 2017

Global Crossing Telecommunications, Inc. (U-5005-C)

By: _____
Its: EVP

June 29, 2017

IP Networks, Inc. (U-6362-C)

By: _____
Its: EVP

June 29, 2017

Level 3 Communications, LLC (U-5941-C)

By: _____
Its: EVP

June 29, 2017

Level 3 Telecom of California, LP (U-5358-C)

By: _____
Its: EVP

June 29, 2017

WilTel Communications, LLC (U-6146-C)

By: _____
Its: EVP

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Office of Ratepayer Advocates

June ___, 2017

By:_____
Its:_____

The Utility Reform Network

June 28, 2017

Christine Mailloux

By: Christine Mailloux
Its: Staff Attorney

The Greenlining Institute

June ___, 2017

By:_____
Its:_____

CenturyLink, Inc.

June ___, 2017

By:_____
Its:_____

This Settlement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

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IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement to be effective as of the date shown above.

Office of Ratepayer Advocates

June 28, 2017

By: CKlinger for ELIZABETH BOLLS
Its: DIRECTOR

The Utility Reform Network

June ___, 2017

By:_____
Its:_____

The Greenlining Institute

June ___, 2017

By:_____
Its:_____

CenturyLink, Inc.

June ___, 2017

By:_____
Its:_____

This Settlement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

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Office of Ratepayer Advocates

June ___, 2017

By:_____
Its:_____

The Utility Reform Network

June 29, 2017

By:_____
Its: Senior Legal Counsel

The Greenlining Institute

June ___, 2017

By:_____
Its:_____

CenturyLink, Inc.

June ___, 2017

By:_____
Its:_____

This Settlement shall be governed by and interpreted in accordance with the laws of the State of California and the rules, regulations and General Orders of the California Public Utilities Commission.

This Settlement Agreement may be executed in one or more counterparts, and each of which when so executed and delivered will be an original and all of which together will constitute one and the same instrument.

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Office of Ratepayer Advocates

June ___, 2017

By:_____
Its:_____

The Utility Reform Network

June ___, 2017

By:_____
Its:_____

The Greenlining Institute

June ___, 2017

By:_____
Its:_____

CenturyLink, Inc.

June 29, 2017

By:_____
Its: Senior VP Policy/Government Relations

(End of Appendix 1)

Appendix 2

********** SERVICE LIST A1703016**********
Last Updated on 07-SEP-2017 by: AMT

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Last Updated on 07-SEP-2017 by: AMT

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(End of Appendix 2)