

WUTC DOCKET: 181051
EXHIBIT: JHJ-13
ADMIT W/D REJECT

Exh. JHJ-13
Docket UT-181051
Witness: Jacque Hawkins-Jones

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

**CENTURYLINK
COMMUNICATIONS, LLC.,**

Respondent.

DOCKET UT-181051

**EXHIBIT TO
TESTIMONY OF**

JACQUE HAWKINS-JONES

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

*In re Notice of Transaction and Application of CenturyLink, Docket UT-170042,
Order 03 (July 27, 2017)*

December 15, 2021

Service Date: July 27, 2017

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Notice of
Transaction and Application of

CENTURYLINK

For an Order Declining to Assert
Jurisdiction Over, or, in the Alternative,
Expedited Approval of the Indirect
Transfer of Control of Level 3
Communications, LLC; Broadwing
Communications, LLC; WilTel
Communications, LLC; Global Crossing
Telecommunications, Inc.; Global
Crossing Local Services, Inc.; and Level
3 Telecom of Washington, LLC, to
Centurylink, Inc.

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ORDER APPROVING
SETTLEMENT AGREEMENT AND
TRANSACTION AND GRANTING
LIMITED WAIVER OF WAC 480-
07-160

BACKGROUND

- 1 On January 17, 2017, CenturyLink (CenturyLink or Company) filed with the Washington Utilities and Transportation Commission (Commission) a Notice of Transaction and Application for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Expedited Approval of the Indirect Transfer of Control of Level 3 Communications, LLC; Broadwing Communications, LLC; WilTel Communications, LLC; Global Crossing Telecommunications, Inc.; Global Crossing Local Services, Inc.; and Level 3 Telecom of Washington, LLC (collectively Level 3) to CenturyLink, Inc. (Application). On February 9, 2017, CenturyLink submitted supplemental exhibits in support of its Application, including the Plan and Agreement of Merger, financial statements for CenturyLink and Level 3, and certifications as required under WAC 480-143-140.
- 2 On February 10, 2017, CenturyLink submitted the prefiled direct testimonies and exhibits of Mark S. Reynolds and Michael J. Balhoff on behalf of CenturyLink, and the prefiled direct testimony and exhibits of Kristie C. Ince on behalf of Level 3.
- 3 Mark S. Reynolds is the NW Region Vice President Public Policy for CenturyLink. He testifies that CenturyLink's acquisition of Level 3 as described in the Application and supplemental exhibits (Transaction) will enable CenturyLink and Level 3 to combine

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their networks to offer enterprise customers a broader range of services and solutions than are currently available from the companies individually. He states that the Transaction will reduce the companies' dependence on leased facilities and enhance the combined company's reach and financial profile, strengthening its ability to invest and compete. At the same time, he testifies that the Transaction will not harm CenturyLink's existing residential customers and will not alter current contracts or the Company's regulatory commitments.¹

4 Michael J. Balhoff is Managing Partner of Balhoff & Williams, LLC, a consulting firm focusing primarily on financial and regulatory issues. He provides an overview of the Transaction, detail about its financing, and a discussion of the post-Transaction financial characteristics of the combined company as they relate to the public interest.²

5 Kristie C. Ince is VP for State Regulatory and Legislative Affairs for Level 3. She describes the Level 3 companies that operate in Washington, all of which are classified as competitive telecommunications companies, and the services they provide. She explains that the Transaction involves a parent level transfer of control of Level 3 that will be seamless and transparent to customers, who will benefit from the efficiencies and synergies realized by the combined company.³

6 On February 14, 2017, the Commission entered Order 02, Prehearing Conference Order, establishing a procedural schedule for Commission consideration of the Transaction.

7 On April 26, 2017, CenturyLink submitted a Settlement Agreement (Settlement) between the Company, Level 3, Commission regulatory Staff (Staff),⁴ and the Public Counsel Unit of the Washington Attorney General's Office (Public Counsel). On May 4, 2017, CenturyLink submitted the joint testimony of Jing Roth, Corey Dahl, Mark S. Reynolds, and Kristie C. Ince in support of the Settlement. The Commission conducted a hearing on the Settlement on May 25, 2017.

¹ Reynolds, Exh. MSR-1T.

² Balhoff, Exh. MJB-1T.

³ Ince, Exh. KCI-1T.

⁴ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

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- 8 Lisa Anderl, Seattle, Washington, represents CenturyLink. Mark Trincherro, Davis Wright Tremaine LLP, Portland, Oregon; Catherine Wang and Danielle Burt, Morgan, Lewis & Bockius LLP, Washington, D.C.; and Kristie C. Ince, Vice President State Regulatory and Legislative Affairs, Frisco, Texas, represent Level 3. Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, represents Staff. Lisa W. Gafken, Assistant Attorney General, Seattle, Washington, represents Public Counsel.

SETTLEMENT

- 9 The Settlement provides that CenturyLink, Level 3, Staff, and Public Counsel agree that the Commission should approve the Application with the following conditions:

- (a) **Maintenance of the Network.** CenturyLink will submit reports to the Commission on May 1 of 2018, 2019, and 2020 detailing the regulated network maintenance expense for the prior calendar year for each of the Company's incumbent local exchange carriers (ILECs) in Washington. The report will include an explanation for any decline in an ILEC's maintenance expense per access line from the levels in 2014-16.⁵
- (b) **Major Outage Reporting.** Until December 31, 2020, CenturyLink will inform Staff of major outages within 30 minutes of the Company's determination that a major outage as defined in WAC 480-120-021 is occurring. CenturyLink will transmit to the Commission the Network Outage Reporting System (NORS) report for reportable Washington outages simultaneously with the Company's submission of that report to the Federal Communications Commission (FCC). The transmission will identify the report as confidential, but the report itself need not include the footer required under WAC 480-07-160, and CenturyLink need not provide a redacted copy of the report except upon Staff request.⁶
- (c) **FUSF Report.** On July 1 of each of the next five years, each CenturyLink ILEC will submit to the Commission a Federal Universal Service Fund (FUSF) report consistent with the form included in the Settlement.⁷

⁵ Settlement, Exh. JP-1 § 5.1.

⁶ *Id.* § 5.2.

⁷ *Id.* § 5.3.

- (d) **Wholesale Transparency.** CenturyLink and Level 3 will continue to submit to the Commission interconnection agreements between their subsidiary companies into which they enter pursuant to 47 U.S.C. § 251.⁸
- (e) **Customer Notice.** CenturyLink will issue a press release within 30 days after the Transaction closes stating that CenturyLink has acquired Level 3. The Company also commits to provide notice of any name change for a telecommunications subsidiary with customers in Washington.⁹
- (f) **911 ESINet Transition.** CenturyLink will dedicate a project manager to work on Washington's Emergency Services Internet Protocol Network (ESINet) transition. The Company will provide sufficient support personnel to timely complete tasks the Washington State Military Department (WSMD) assigns to CenturyLink under the successor vendor's project plan as set forth in Amendment M to the contract between CenturyLink and WSMD covering Next Generation 911 (NG911) services. CenturyLink will continue to negotiate in good faith the reasonable transition services included in that amendment. CenturyLink also will notify WSMD of all 911 major outages as defined in WAC 480-120-021.¹⁰

10 Jing Roth, Corey Dahl, Mark Reynolds, and Kristie Ince in their joint testimony in support of the Settlement explain that the goal underlying these conditions is to provide “assurances that the acquisition, and the integration activities following the closing of the transaction, would not negatively impact CenturyLink’s ILEC customers in the state.”¹¹ These witnesses state that “with these commitments, the transaction is not inconsistent with the public interest and should be approved under WAC 480-143-170.”¹²

11 Jing Roth on behalf of Staff focuses on the first four Settlement conditions. She testifies that they “will allow Staff to monitor and evaluate on a continuing basis whether CenturyLink is continuing to provide adequate investment to ensure reliable and adequate services to Washington consumers in the post-merger environment.”¹³ With respect to the

⁸ *Id.* § 5.4.

⁹ *Id.* § 5.5.

¹⁰ *Id.* § 5.6.

¹¹ Joint Testimony, Exh. JT-1T at 6:8-10.

¹² *Id.* at 3:20-21.

¹³ *Id.* at 9:17-20.

first commitment, the annual reports of CenturyLink’s average maintenance expenses for each ILEC “will provide a useful tool for the Commission to monitor CenturyLink’s effort to maintain its network going forward.”¹⁴ The second commitment for CenturyLink to provide notification of major outages within 30 minutes of their occurrence implements the phrase “as soon as possible” as used in the Commission rule requiring such reporting.¹⁵ The FUSF reporting requirement in the third commitment “is to ensure that CenturyLink follows through on its commitment to utilize FUSF for broadband deployment in rural areas in Washington.”¹⁶ Finally, because CenturyLink and Level 3 represent that their operating subsidiaries will remain separate after the merger, the fourth commitment requires CenturyLink to continue to submit to the Commission and make available to other carriers any of its subsidiaries’ interconnection agreements with Level 3 entities as required by federal law.¹⁷

- 12 Corey Dahl on behalf of Public Counsel agrees with Staff that the required FUSF “reports will provide stakeholders with information needed to ensure that the Company maintains commitments in service and infrastructure improvement to Washington consumers, particularly those served in high-cost service areas.”¹⁸ He testifies that requiring CenturyLink to provide notice to the public upon closure of the merger and in the event of additional transactions or name changes is an important customer safeguard. He also explains that Public Counsel requested specific 911 ESINet transition commitments in the Settlement to address the concern that the merger might divert CenturyLink’s attention from its Washington operations.¹⁹
- 13 Mark Reynolds and Kristie Ince testify that “CenturyLink and Level 3 believe that the commitments they have made are not unduly burdensome, nor inconsistent with the public interest, and were therefore willing to agree to those commitments as a way of

¹⁴ *Id.* at 12:8-9.

¹⁵ *Id.* at 13.

¹⁶ *Id.* at 14:3-4.

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 17:15-18.

¹⁹ *Id.* at 18-19.

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expediting approval of the transaction” in light of its critical importance to the future of the companies.²⁰

- 14 The Commission received a comment from WSMD expressing concerns about the transition from CenturyLink to a new network provider of 911/NG911 service and recommending that the Commission not approve the Application until agreements are executed that resolve all transition issues.²¹ CenturyLink submitted a response to this comment, objecting to Commission consideration of its contents, clarifying what the Company contends are factual errors, and opposing any delay in Commission approval of the Application.²² The Commission received no other public comments in this docket.

DISCUSSION AND DECISION

- 15 The public service laws of the State of Washington set forth the standard for our decision in this docket. First, “a public service company may not complete a transfer of property necessary or useful to perform its public duties unless the company first applies for, and obtains, commission approval.”²³ This applies whenever a company pursues a merger with, or transfers property to, another entity. Second, the Commission must find that any transaction that results in such a transfer is consistent with the public interest.²⁴ Third, when parties to a proceeding reach and file a settlement, “the commission will approve settlements when doing so is lawful, the settlement terms are supported by an appropriate record, and when the result is consistent with the public interest in light of all the information available to the commission.”²⁵ Finally, the Commission may approve a settlement, with or without conditions, or reject it.
- 16 We approve the Settlement in this proceeding without conditions and find that the Transaction in conjunction with the Settlement is consistent with the public interest. As part of that approval, we grant a partial waiver of WAC 480-07-160 but further define the scope of that waiver. We also require CenturyLink to provide the Commission with a

²⁰ *Id.* at 20:14-17.

²¹ Letter from Alan Wasserman, WSMD E911 Coordinator, to Steve King (May 19, 2017).

²² Letter from Lisa Anderl, Counsel for CenturyLink, to Steve King (May 24, 2017).

²³ WAC 480-143-120.

²⁴ WAC 480-143-170.

²⁵ WAC 480-07-750(1).

copy of Amendment M to its contract with WSMD to enable the Commission to enforce the Settlement provisions governing the 911 ESINet transition.

Transaction

- 17 CenturyLink and Level 3 agreed on a merger in which CenturyLink would acquire Level 3 for approximately \$34 billion in CenturyLink stock (60 percent) and cash comprised of incremental funded debt and cash on hand (40 percent). The resulting company will be a “facilities-based enterprise communications provider with \$19 billion in pro forma business revenues representing approximately 76% of the combined company’s total consolidated revenues.”²⁶ According to the Company’s consultant, “CenturyLink expects to realize cash flow benefits . . . that, by my estimate, might be greater than twice the interest on the incremental transaction-related debt obligations.”²⁷
- 18 CenturyLink represents “that it will *not* secure the acquisition financing with guarantees from regulated ILECs nor pledges of regulated ILEC operations or assets. No regulated ILEC will issue any debt to finance the Transaction.”²⁸ CenturyLink subsidiary Qwest Services Corporation, however, will be a guarantor of the acquisition financing and as such will pledge the stock of Qwest Corporation, a regulated ILEC in Washington. While it is theoretically possible that a default could result in the lender assuming control of Qwest Corporation by acquiring the company’s stock, we are satisfied that this possibility is extremely remote and that CenturyLink is aware that any change in control of Qwest Corporation would be subject to Commission review and approval.²⁹
- 19 The parties have also assuaged our other potential concern with the Transaction that its efficiencies and synergies will come at the expense of residential services and ratepayers. Witnesses for CenturyLink and Public Counsel agreed that the Transaction will not result in a shift of resources away from the Company’s regulated operations.³⁰ CenturyLink also acknowledges that the Commission retains authority to ensure that the CenturyLink ILECs’ services are fair, just, reasonable, and sufficient.³¹ Moreover, the Settlement

²⁶ Balhoff, Exh. MJB-1T at 8:6-9.

²⁷ *Id.* at 12:7-10.

²⁸ *Id.* at 17:19 – 18:1 (emphasis in original).

²⁹ *See* Balhoff, TR. 63:15 – 65:15.

³⁰ Reynolds, TR. 48:18 – 52:4; Balhoff, TR. 53:10 – 54:5; Dahl, TR. 65:17 – 66:5.

³¹ Reynolds, TR. 52:11 – 53:3.

includes conditions that further mitigate the risk that the Company's post-Transaction focus on its enterprise customers will result in a reduction of attention to providing basic local exchange service and possible harm to more vulnerable consumers. We discuss those conditions below.

Reporting Requirements

- 20 The Settlement requires CenturyLink to provide three types of reports: (1) an annual report in each of the next three years detailing the regulated network maintenance expense for the prior calendar year for each of the Company's ILECs in Washington; (2) NORs reports for reportable Washington outages submitted simultaneously with the Company's transmission of those reports to the FCC; and (3) an FUSF report for each CenturyLink ILEC on July 1 of each of the next five years. The maintenance and FUSF reports are intended to provide the Commission with information to determine whether CenturyLink continues to invest in its network to serve basic local exchange service in the years after the merger closes until at least the expiration of the alternative form of regulation plan under which the Company currently operates. The NORs reports, in conjunction with CenturyLink's commitment to inform Staff and WSMD of major outages within 30 minutes, will provide the Commission with prompt notification of, and information about, major network disruptions.
- 21 We agree with Staff and Public Counsel that CenturyLink's commitment to provide these reports results in public interest benefits. The Transaction will expand the nature and scope of the Company's enterprise business offerings, but such expansion should not come at the cost of providing fair, just, reasonable, and sufficient telecommunications service to residential and small business customers. Comparing the CenturyLink ILECs' past and future maintenance expenses and FUSF spending will better enable the Commission to monitor, and if necessary facilitate action to remedy, any negative impacts of the Transaction on the Company's regulated operations. The prompt major outage reporting requirements will also shore up recent deficiencies in CenturyLink's reporting of such outages.³²

³² See, e.g., *WUTC v. CenturyLink*, Docket UT-132234, Order 06 Imposing Suspended Penalties (June 1, 2017) (imposing suspended penalties for repeated failure to promptly notify Staff and WSMD of major 911 outage). We question whether this Settlement provision will provide a greater incentive for the Company to comply with its obligations when much higher penalties have proved insufficient. We nevertheless accept the parties' representations that penalties for

22 Accordingly, we find that the reporting requirement provisions in the Settlement are lawful, supported by an appropriate record, and consistent with the public interest in fair, just, reasonable, and sufficient telecommunications services.

Interconnection Agreements

23 Federal and Washington law require ILECs and competing local exchange carriers (CLECs) to submit to the Commission for approval all interconnection agreements between them.³³ The Transaction occurs at the parent company level, so CenturyLink ILECs and Level 3 CLECs will continue to operate separately. The Settlement requires CenturyLink and Level 3 to continue to submit interconnection agreements between those operating entities to the Commission.

24 This condition appropriately clarifies CenturyLink's and Level 3's legal obligations with respect to submitting interconnection agreements to the Commission. We find that the condition is lawful, supported by an appropriate record, and consistent with the public interest in the companies' compliance with applicable law.

Customer Notice

25 The Settlement requires CenturyLink to issue a press release within 30 days after the Transaction closes and to notify customers if any of its telecommunications subsidiaries changes its name post-Transaction. Customers are entitled to notice of changes to their utility that may impact the service they receive. Thus, this Settlement provision is lawful, supported by an appropriate record, and consistent with the public interest in providing information to consumers about changes that may affect their telecommunications service.

911 ESINet Transition

26 CenturyLink currently provides 911 service in Washington, but WSMD has contracted with a new vendor to provision that service. The Settlement requires CenturyLink to cooperate with the 911 ESINet vendor transition, including dedicating a project manager and sufficient support personnel to timely complete tasks WSMD assigns as set forth in Amendment M to the contract between CenturyLink and WSMD covering NG911

violation of this provision would supplement the remedies for violating other applicable Commission requirements. *See* TR. 82-85.

³³ 47 U.S.C. § 252(e); WAC 480-07-640.

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services. As of the hearing date, however, those parties were continuing to negotiate that amendment,³⁴ and the Settlement requires CenturyLink to negotiate its terms in good faith.

27 The uninterrupted provision of 911 service in Washington is of vital importance. We have experienced first-hand some of the harm that results from even the temporary unavailability of that service.³⁵ We agree with Public Counsel that the Transaction should not in any way delay, disrupt, or interfere with CenturyLink's hand-off of its 911 responsibilities to the new provider.

28 The Settlement provision that addresses this issue, however, is broadly drafted and offers little in the way of concrete obligations that the Commission can readily enforce. Based on the record before us, CenturyLink and WSMD have yet to agree on the tasks CenturyLink must undertake in the transition process, and whether a party is negotiating in good faith is too often a matter of subjective judgment. Indeed, the letters WSMD and CenturyLink submitted to the Commission raising their grievances with each other, while not in the record, illustrate that "good faith" looks different in the eye of each beholder.

29 We nevertheless find value in having even the limited oversight of the 911 ESINet transition process required in the Settlement. CenturyLink understands the need for a smooth transition,³⁶ and we expect the Company to work cooperatively with WSMD to achieve it. If that proves not to be the case, however, the Commission is prepared to take appropriate action. Toward that end, we require CenturyLink to submit a copy of Amendment M to the contract between the Company and WSMD once the contract is executed so that we know the parties' obligations and can be prepared to enforce those obligations as appropriate and necessary.³⁷ In the meantime, we accept and will enforce the Company's commitment to continue to provide fair, just, reasonable, and sufficient 911 service until the transition to the new provider is complete.³⁸

³⁴ Reynolds, TR. 87:11 – 88:5.

³⁵ See, e.g., *WUTC v. CenturyLink*, Docket UT-140597, Order 03 Approving Settlement Agreement (Feb. 22, 2016).

³⁶ CenturyLink, TR. 95:10-21.

³⁷ CenturyLink has already agreed to submit that document to the Commission as a compliance filing in this docket. CenturyLink, TR. 100:11 – 101:7.

³⁸ Reynolds, TR. 88:6-17, 89:8-23 & 93:18 – 95:21.

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30 We conclude that the Settlement provision governing the 911 ESINet transition is lawful, supported by an appropriate record, and consistent with the public interest in maintaining fair, just, reasonable, and sufficient 911 service.

Partial Waiver of WAC 480-07-160

31 The Settlement provides that when CenturyLink transmits any NORS report for Washington outages, the transmission will identify the report as confidential, but the report itself will not include a running footer identifying it as confidential pursuant to WAC 480-07-160, and CenturyLink will not provide a redacted copy of the report except upon Staff request.³⁹ The parties thus effectively request the Commission to exempt CenturyLink from the provisions of WAC 480-07-160, the rule governing confidential submissions, requiring such marking and a redacted copy.

32 The Commission grants exemptions to its rules if, and only to the extent, the exemption is consistent with the public interest. “Factors the commission may consider in making this determination include whether the rule imposes an undue hardship on the requesting person of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule to the requesting person would be contrary to the underlying purposes of the rule and the public interest.”⁴⁰

33 CenturyLink has committed to provide a copy of the NORS report to the Commission simultaneously with the Company’s submission of that report to the FCC. The report will be marked as confidential but not with the full language specified in the rule.⁴¹ Expeditious outage reporting is critically important, and we accept for purposes of CenturyLink’s commitment that marking and providing a redacted copy of the report as required under WAC 480-07-160 when initially providing the report to the Commission would unnecessarily delay our receipt of that report.

34 The Commission, however, must comply with the Public Records Act⁴² and RCW 80.04.095. Those statutes require that the Commission not disclose information designated as confidential but make publicly available all non-exempt information. WAC

³⁹ *Id.* § 5.2.

⁴⁰ WAC 480-07-110(2)(c).

⁴¹ CenturyLink, TR. 75:7-18.

⁴² RCW Chapter 42.56.

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480-07-160 implements those obligations, in part, by requiring a document containing confidential information to be marked properly so that the Commission can identify and protect that information,⁴³ and by requiring a second copy of the document from which the information is redacted to allow public access to as much of the Commission's public records as possible.⁴⁴

- 35 To balance the legitimate interests in confidentiality and those of disclosure, we will grant the requested limited exemption but only with respect to the initial transmission of a NORs report. CenturyLink must resubmit that report in full compliance with WAC 480-07-160 within three business days of the Company's original submission.⁴⁵ To ensure that the Commission does not retain any copy of the report that is not marked as confidential, Commission telecommunications regulatory services Staff must verify that each page of the report the Company originally transmits is marked at a minimum with the designation "Confidential," and provide such marking, if necessary, as soon as practicable after the Commission receives the original transmission.

Settlement as a Whole

- 36 In addition to the individual substantive provisions, the Settlement as a whole must be lawful, supported by an appropriate record, and consistent with the public interest. We conclude that it is.
- 37 CenturyLink's primary goal in the Transaction is to enhance its enterprise business service offerings, which we regulate very lightly, if at all. The Transaction also promises to improve the Company's financial profile and "strengthen its ability to invest and compete in the long term."⁴⁶ The Commission has a strong interest in the financial viability of the companies it regulates. Particularly in the highly competitive market of

⁴³ See WAC 480-07-160(4)(d)(i)(A). The rule requires that a document be marked "Designated information is confidential per WAC 480-07-160," rather than just "Confidential," to make clear that only information designated as confidential, not necessarily the document as a whole, is protected from public disclosure and to specify the legal basis on which the Commission must protect that information.

⁴⁴ See WAC 480-07-160(4)(b)(ii).

⁴⁵ CenturyLink represents that it can provide a redacted copy of the report "within a couple of business days." CenturyLink, TR. 76:4-6. Correspondingly, the Company should be able to designate the information in the report that is confidential within that same period of time and include the full language the rule requires.

⁴⁶ Reynolds, Exh. MSR-1T at 3:15.

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providing telecommunications services, we generally have a positive view of ILECs' efforts to bolster their ability to compete as long as those efforts benefit, or at least do not harm, residential and small business customers.

38 We are satisfied that the Transaction with the conditions agreed to in the Settlement provides a net positive effect in Washington. CenturyLink will become a more competitive company while continuing to fulfill its obligations to provide fair, just, reasonable, and sufficient telecommunications service to consumers who may have limited choices. We are aware that the Company may have an incentive to devote its resources to its more lucrative offerings, particularly when CenturyLink anticipates that it will generate approximately 76 percent of its revenues from its enterprise services as a result of the Transaction.⁴⁷ The Commission will continue to monitor the Company's service quality, through the reporting in the Settlement and using other tools at our disposal, and we will take appropriate action if any of the CenturyLink ILECs fail to fully comply with their regulatory obligations. In the meantime, we agree with the parties that we should approve the Settlement and the Transaction.

39 We conclude that the Settlement as a whole is lawful, supported by an appropriate record, and consistent with the public interest in ensuring fair, just, reasonable, and sufficient telecommunications service in Washington. Accordingly, we approve the Settlement and the Transaction.

FINDINGS OF FACT

40 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.

41 (2) CenturyLink and Level 3 are public service companies regulated by the Commission, providing service as telecommunications companies.

42 (3) On April 26, 2017, the parties submitted a full Settlement pursuant to WAC 480-07-730(1) in which they agree the Commission should approve CenturyLink's acquisition of Level 3 as described in the Application and supporting exhibits with six conditions to assure that the acquisition and attendant integration

⁴⁷ Balhoff, Exh. MJB-1T at 8:6-9.

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activities will not negatively impact the CenturyLink ILECs in Washington or their customers.

- 43 (4) The network maintenance, major outage, and FUSF reporting requirements in the Settlement will better enable the Commission to monitor, and if necessary facilitate action to remedy, any negative impacts of the Transaction on the Company's regulated operations.
- 44 (5) CenturyLink has committed to continue to provide the 911 service it currently provides until the 911 ESINet transition to a new vendor is complete.
- 45 (6) The Commission's immediate receipt of NORS reports enables the Commission to work with CenturyLink, affected governmental entities, and consumers to promptly address major network outages.

CONCLUSIONS OF LAW

- 46 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 47 (2) The Commission will approve the Transaction if it is consistent with the public interest.
- 48 (3) The Commission will approve the Settlement if it is lawful, supported by an appropriate record, and consistent with the public interest.
- 49 (4) The network maintenance, major outage, and FUSF reporting requirements in the Settlement are lawful, supported by an appropriate record, and consistent with the public interest in maintaining fair, just, reasonable, and sufficient telecommunications services.
- 50 (5) The Settlement provision requiring CenturyLink ILECs and Level 3 CLECs to continue to submit interconnection agreements between them to the Commission is lawful, supported by an appropriate record, and consistent with the public interest in companies' compliance with applicable law.
- 51 (6) The customer notice requirements in the Settlement are lawful, supported by an appropriate record, and consistent with the public interest in informing consumers of changes that may impact the regulated service they receive.

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- 52 (7) The Settlement provision governing 911 ESINet transition is lawful, supported by an adequate record, and consistent with the public interest in maintaining fair, just, reasonable, and sufficient 911 service.
- 53 (8) The Commission should exempt the Company's initial submission of NORS reports from compliance with the provisions of WAC 480-07-160 that require documents that contain information designated as confidential be marked with specific language on the cover page and each individual page that includes that information and be submitted along with a copy that redacts the confidential information. CenturyLink, however, should make a subsequent submission of the report in full compliance with WAC 480-07-160 within three business days. Telecommunications regulatory services Staff should ensure that each page of the report as originally transmitted is marked at a minimum as "Confidential," and provide such markings if necessary, as soon as practicable after the Commission receives that transmission.
- 54 (9) CenturyLink must submit a copy of Amendment M to the contract between the Company and WSMD once the parties have executed it so that the Commission knows the parties' obligations and can be prepared to enforce those obligations as appropriate and necessary.
- 55 (10) The Settlement as a whole is lawful, supported by an appropriate record, and consistent with the public interest in ensuring fair, just, reasonable, and sufficient telecommunications services to customers in Washington.
- 56 (11) The Transaction in conjunction with the Settlement is consistent with the public interest.

ORDER

57 **THE COMMISSION ORDERS:**

- 58 (1) The Commission approves and adopts the Settlement Agreement between CenturyLink, Level 3, Commission Staff, and the Public Counsel Unit of the Attorney General's Office attached to this Order as Appendix A.
- 59 (2) The Commission approves CenturyLink's acquisition of Level 3 as described in the Application and supporting exhibits filed in this docket.

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- 60 (3) The Commission grants the limited waiver of WAC 480-07-160 as described in paragraph 35 above.
- 61 (4) CenturyLink must file with the Commission Amendment M to the contract between CenturyLink and the Washington State Military Department covering NG911 services and any revisions to that Amendment within 10 business days after the parties execute that Amendment or subsequently revise the Amendment.
- 62 (5) CenturyLink must continue to provide the 911 service it currently provides until the transition to the new provider is complete.
- 63 (6) The Commission retains jurisdiction to enforce the terms of this Order and delegates to the Secretary the authority to confirm compliance with this Order.

Dated at Olympia, Washington, and effective July 27, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.