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*Via Electronic and Hand Delivery*

April 20, 2017

Irene Kim Asbury, Board Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3rd Fl., Ste. 314  
P.O. BOX 350  
Trenton, New Jersey 08625-0350

Re: I/M/O the Joint Petition of Level 3 Communications, Inc., Together with CenturyLink, Inc., for Approval of Indirect Transfer of Control of: Level 3 Communications, LLC, Level 3 Telecom of New Jersey, LP, Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., Telcove Operations, LLC and WilTel Communications, LLC to CenturyLink, Inc. and Related Approvals. **BPU Docket No.: TM16121159**

Dear Secretary Asbury:

The Division of Rate Counsel ("Rate Counsel") hereby files an original and ten copies of comments for the New Jersey Board of Public Utilities' review and consideration in the above referenced matter. Rate Counsel pursuant to the Non-Disclosure Agreement hereby files one set of comments designated as "confidential" and filed under seal herein and a second set of comments designated as redacted "public" version for the Board's record in the above referenced matter.

Kindly return a date-stamped "Received/Filed" copy for Rate Counsel's records. Thank you for your attention to this matter.

Respectfully Submitted,

STEFANIE A. BRAND, DIRECTOR  
DIVISION OF RATE COUNSEL

Maria T. Novas-Ruiz,  
Assistant Deputy Rate Counsel

w/encl.  
c. Service List

**I/M/O the Joint Petition of Level 3  
Communications, Inc., together with  
CenturyLink, Inc. for Approval of  
Indirect Transfer of Control of: Level 3  
Communications, LLC, Level 3  
Telecom of New Jersey, LP,**

**Broadwing Communications, LLC,  
Global Crossing Local Services, Inc.,  
Global Crossing Telecommunications,  
Inc., Telcove Operations, LLC and  
WilTel Communicaitons, LLC to  
CenturyLink, Inc. and Related  
Approvals**

**BPU Docket No.: TM16121159**

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**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

I/M/O the Joint Petition of Level 3 Communications, Inc., Together with CenturyLink, Inc., for Approval of Indirect Transfer of Control of: Level 3 Communications, LLC, Level 3 Telecom of New Jersey, LP, Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., Telcove Operations, LLC and WilTel Communications, LLC to CenturyLink, Inc. and Related Approvals

**BPU Docket No.: TM16121159**

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**COMMENTS OF THE STATE OF NEW JERSEY  
DIVISION OF RATE COUNSEL**

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On the Comments:

Susan M. Baldwin

**Dated: April 20, 2017.**

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### **List of Exhibits**

Confidential Exhibit RC---1	Residential Broadband Deployment Among Speed Tiers, By Wire Center
Confidential Exhibit RC---2	Residential Broadband Deployment Among Speed Tiers, By Wire Center (Percentage Distribution)
Confidential Exhibit RC---3	Residential Broadband Deployment: 25 Mbps and above; 10 to 25 Mbps; under 25 Mbps, by Wire Center (Alphabetical)
Confidential Exhibit RC---4	Residential Broadband Deployment: 25 Mbps and above; 10 to 25 Mbps; under 25 Mbps, by Wire Center (Ranked by % 25 Mbps and above)
Confidential Exhibit RC---5	Joint Petitioners Response to RC---1(a) and (b) Broadband Deployment to Households, by Speed, and by Wire Center
Confidential Exhibit RC---6	Joint Petitioners Response to RC---1(g) and (h) Broadband Deployment to Anchor Institutions, by Speed, and by Wire Center
Confidential Exhibit RC---7	Joint Petitioners Response and Supplemental Response to RC---2 Broadband Demand (Adoption) Residential and Small Business Consumers, by Speed: 2014 through 2016

## I. Introduction

### A. Overview and Summary

On December 14, 2016, Level 3 Communications, Inc. together with CenturyLink, Inc. (“Joint Petitioners”) submitted a joint petition to the Board of Public Utilities (“Board”) for approval of indirect transfer of control of Level 3 Communications, LLC, Level 3 Telecom of New Jersey, LP, Broadwing Communications, LLC, Global Crossing Local Services, Inc., Global Crossing Telecommunications, Inc., Telcove Operations, LLC and WilTel Communications, LLC to CenturyLink, Inc. and Related Approvals (“Joint Petition”). Joint Petitioners anticipate a closing by September 30, 2017, and seek a Board order approving the transaction by mid-summer 2017.<sup>1</sup>

The New Jersey Division of Rate Counsel (“Rate Counsel”) and its consultant have reviewed the Joint Petition and summarize their initial analysis and recommendations in these comments and Confidential Exhibits RC-1 through RC-7.<sup>2</sup>

The ownership and operation of the incumbent local exchange carrier (“ILEC”) that serves the northwest area in New Jersey has evolved significantly during the past ten years.<sup>3</sup> This ILEC’s increasing scale and scope, a trend which the proposed transaction

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<sup>1</sup> Joint Petition, at 14.

<sup>2</sup> Susan M. Baldwin assisted with the preparation of these comments.

<sup>3</sup> In 2006, after the 2004 merger of Sprint and Nextel, the Sprint local telephone companies, including United Telephone Company of New Jersey, were spun off to become Embarq Local Operating Companies. CenturyTel, Inc. purchased Embarq in 2009 and subsequently changed its name to CenturyLink. In 2010, CenturyLink purchased Qwest. See, e.g., In the Matter of Joint Petition of United Telephone Company of New Jersey, Inc. d/b/a Sprint and LTD Holding Company for Approval Pursuant to *N.J.S.A. 48:2-51* and *N.J.S.A. 48:3-10* of a change in Ownership and Control; New Jersey Board of Public Utilities Docket No. TM05080739; In the Matter of Qwest Communications Company and CenturyTel, Inc. for Approval of



would continue, creates opportunities and poses risks for households, small businesses, and communities in New Jersey. The opportunities arise because, with each merger, CenturyLink has access to potentially more resources and expertise with which it can offer consumers and communities state-of-the-art telecommunications services.<sup>4</sup> Also, mergers typically generate synergies, which can be shared with consumers.

CenturyLink's proposed acquisition of Level 3 is projected to yield national annual synergies of \$975 million,<sup>5</sup> which the Joint Petitioners could share in part with New Jersey's consumers and communities.

The risks of the proposed transaction arise because the line of business that concerns New Jersey's residential and small business customers diminishes in relative scale with each expansion by the parent company into other states, countries, and lines of business.<sup>6</sup> One key challenge for the Board is to ensure that CenturyLink's enhanced focus on enterprise customers, which the proposed transaction would facilitate, does not

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Control of Qwest Communications Company LLC, New Jersey Board of Public Utilities Docket No. TM10050343.

<sup>4</sup> Among the benefits that CenturyLink describes on the portion of its website devoted to the proposed merger are: "Allow us to meet customers' needs more effectively, through an enhanced network footprint and broader, more complementary range of services and solutions. Provide an opportunity to further invest in broadband access for customers across platforms, enhancing broadband speed, enabling OTT video and changing the way customers interact with technology."

[http://ir.centurylink.com/GenPage.aspx?IID=4057179&GKP=329255;](http://ir.centurylink.com/GenPage.aspx?IID=4057179&GKP=329255)  
<https://www.connectingtheneweconomy.com/value-to-you/#customers>

<sup>5</sup> "CenturyLink to Acquire Level 3, Creates Second Largest Domestic Communications Provider Serving Global Enterprise Customers," presentation to investors, October 31, 2016 ("October 2016 Investor Presentation"), at 12.

<http://ir.centurylink.com/Cache/1001215938.PDF?Y=&O=PDF&D=&fid=1001215938&T=&iid=4057179>

<sup>6</sup> In its presentation to investors, CenturyLink indicated that its revenue mix pre- and post-merger would change from 36% residence and 64% business to 24% residence and 76% business. Also, its revenue mix would change from 50% legacy and 50% "strategic" to 35% legacy and 65% strategic. October 2016 Investor Presentation, at 10.

<http://ir.centurylink.com/Cache/1001215938.PDF?Y=&O=PDF&D=&fid=1001215938&T=&iid=4057179>



jeopardize the quality, capability and prices of the services CenturyLink offers its small consumers.<sup>7</sup> Another challenge is to ensure that the Company commits to leveraging its merger-related increased expertise and capabilities to serve better small customers and anchor institutions in New Jersey.<sup>8</sup>

Moreover, by eliminating Level 3 as an actual and potential competitor in the business data services (“BDS”) market (previously referred to as the special access market), not only in CenturyLink’s footprint but also in Verizon’s New Jersey footprint, the transaction could lead to higher BDS prices than might otherwise occur. Rate Counsel discusses these concerns in these comments.

**B. The proposed transaction is pending review by the Federal Communications Commission**

The Federal Communications Commission (“FCC”) is reviewing the transaction as are other state public utility commissions.<sup>9</sup> As recently as March 30, 2017, the FCC issued a detailed information and data request to the Petitioners,<sup>10</sup> including, among other

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<sup>7</sup> The Joint Petitioners assert that: “Level 3 does not serve residential subscribers or consumers, and nothing about the Transaction is expected to negatively affect the portion of CenturyLink’s operations that is directed at the consumer segment. The Transaction will have no effect on CenturyLink’s regulatory obligations toward residential subscribers, or on any pending commitments or obligations CenturyLink may have in connection with those subscribers, such as rural broadband deployment obligations associated with the Connect America Fund.” FCC Application, Exhibit B, Public Interest Statement, at B-4.

<sup>8</sup> Joint Petitioners state that “[f] anything, by making the combined company a stronger, better-resourced competitor in the enterprise market, CenturyLink can be expected to have greater resources at its disposal to serve all of its customers.” FCC Application, Exhibit B, Public Interest Statement, at B-20. See also Joint Petitioners response to RC-19, in which Joint Petitioners assert that “[s]uccessfully serving the residential (consumer) market place is and will remain a focus of CenturyLink.”

<sup>9</sup> On April 8, 2017, the FCC was on day 108 of its review. Consolidated Application to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket 16-403 (filed Dec. 12, 2016) (“Application”); Applications Filed for the Transfer of Control of Level 3 Communications, Inc. to CenturyLink, Inc., WC Docket 16- 403, *Public Notice*, 31 FCC Rcd 13408 (2016).

things, a request for the “Applicants’ plans to pass through any cost savings from the Transaction to consumers and the extent to which Applicants have passed through past cost savings to consumers from prior transactions (including the magnitude and time horizon for these pass-through cost savings to consumers).” The FCC’s continuing investigation of the proposed transaction means that there is adequate time for the Board to conduct its parallel review in a well-considered time frame. Rate Counsel intends to review the Petitioners’ forthcoming responses to the FCC’s information and document requests, and to supplement these comments if and as is appropriate based on that review.

## **II. Overview of Proposed Transaction**

In mid-December 2016, Level 3 Communications, Inc. (“Level 3”) and CenturyLink, Inc. (“CenturyLink”) submitted a Joint Petition to the Board seeking

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<https://www.fcc.gov/transaction/centurylink-level3>. See also <https://ecfsapi.fcc.gov/file/12131078120341/CenturyLink-Level%203%20214%20Application.pdf>

Likewise, on January 17, 2017, CenturyLink and Level 3 filed seven Advice Letters with the California Public Utilities Commission (“CPUC”) requesting approval of CenturyLink’s acquisition of Level 3 certificated companies with the CPUC. <http://www.ora.ca.gov/general.aspx?id=3718> The transaction is pending review by the CPUC. The transaction is also pending review by the New York Public Service Commission.

<sup>10</sup> On March 30, 2017, the FCC sent a letter to the Petitioners seeking information and document requests, with responses due April 13, 2017. The requests concern, among other issues, information about each of the Applicant’s fiber deployment, business data service (previously referred to as special access service) and plans, and issues that seem to get to the question of the impact of the transaction on competition (i.e., the extent to which the merger would eliminate an actual or potential competitor). The FCC has also asked questions regarding public benefits, seeking the steps Applicants will take to achieve the claimed cost savings, efficiencies, synergies, and other benefits; the costs and risks Applicants face in realizing these effects; the breakdown between savings in fixed costs and marginal costs; the plans to pass through any cost savings consumers and the time required to achieve these effects (including whether they are primarily short-term or long-term); and the extent to which Applicants have passed through past cost savings to consumers from prior transactions (including the magnitude and time horizon for these pass-through cost savings to consumers).” [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0330/DA-17-296A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0330/DA-17-296A1.pdf)

approval of the indirect transfer of control of various Level 3 affiliates and entities to CenturyLink. The major rationale for the proposed transaction is to improve CenturyLink's ability to compete in the enterprise market. Level 3 does not serve residential customers.

Level 3's operating companies would become indirect, wholly owned subsidiaries of CenturyLink, and upon the transaction's closing CenturyLink shareholders would own approximately 51 percent of the combined company and Level 3 shareholders would own approximately 49 percent of the combined company.<sup>11</sup> CenturyLink anticipates transaction-related incremental debt of \$7.0 billion, to be acquired by CenturyLink. None of CenturyLink's entities that are regulated by the Board would be participating as co-borrowers, guarantors, or issuers of security interests related to the acquisition debt.<sup>12</sup>

CenturyLink's proposed acquisition of Level 3 is projected to yield national annual synergies of \$975 million.<sup>13</sup>

As of year-end 2016, in New Jersey, CenturyLink serves <<<BEGIN

**CONFIDENTIAL** [REDACTED]

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<sup>11</sup> Joint Petition, at 7.

<sup>12</sup> Joint Petition, at 8. Originally, the Petitioners anticipated that CenturyLink Communications, LLC, which operates as a competitive local exchange carrier and interexchange carrier in New Jersey, would be a guarantor but in a letter dated March 16, 2017, the Petitioners informed the Board that CenturyLink Communications, LLC will not be a guarantor.

<sup>13</sup> "CenturyLink to Acquire Level 3, Creates Second Largest Domestic Communications Provider Serving Global Enterprise Customers," presentation to investors, October 31, 2016 ("October 2016 Investor Presentation"), at 12.

<http://ir.centurylink.com/Cache/1001215938.PDF?Y=&O=PDF&D=&fid=1001215938&T=&iid=4057179>

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] . END

**CONFIDENTIAL**>>><sup>15</sup> In response to Board Staff discovery, Level 3 provided information, designated as confidential, regarding the total customers and the total New Jersey customers of Level 3 Communications, LLC, Broadwing Communications, LLC, Global Crossing Telecommunications Inc. TelCove Operations, LLC, Wiltel Communications, LLC, and Level 3 Telecom of New Jersey, LLC.<sup>16</sup>

Although the impact of the proposed transaction on consumers is far less than that of many other transactions that Rate Counsel has examined, the proposed transaction raises some concerns that merit a closer look.

**III. Standard of Review**

The Board has a statutory obligation to consider the impact of the merger on competition and rates. As set forth in *N.J.S.A. 48:2-51.1(a)*, “the Board must evaluate the impact of such an acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on

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<sup>14</sup> Joint Petitioners original response and supplemental response to RC-2.  
<sup>15</sup> Joint Petitioners supplemental response to RC-6(d).  
<sup>16</sup> See Level 3 Response to Staff Discovery S-OCTV&T numbers 7, 10, 13, 16, 19 and 22.

the provision of safe and adequate utility service at just and reasonable rates.”<sup>17</sup>

Furthermore, in review of proposed mergers the Board has consistently held that it “must be satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in *N.J.S.A. 48:2-51.1* and *N.J.A.C. 14:1-5.14(c)*.”<sup>18</sup> In addition, the Board must determine whether the public utility, or a wholly-owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees, should these obligations exist under *N.J.S.A. 48:3-7* and *N.J.S.A. 48:3-10*.<sup>19</sup>

Under *N.J.S.A. 48:2-51.1*, the Board must consider the merger’s impact on the following:

- competition;
- the rates of ratepayers affected by the acquisition of control;
- the employees of the affected public utility or utilities; and
- the provision of safe and adequate utility service at just and reasonable rates.<sup>20</sup>

The Board is also charged with producing a “written report detailing the basis for its decision, including findings of fact and conclusions of law.”<sup>21</sup> Under *N.J.S.A. 48:3-10*, the Board must authorize a sale or transfer of stock of a public utility to another public utility and must ensure that public utility is able to meet its obligations with respect to employee pension benefits.

In May, 2006, the Board amended *N.J.A.C. 14:1-5.14* to explicitly require that

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<sup>17</sup> I/M/O the Verified Petition of XO Holdings, XO Communications Services, LLC and Verizon Communications, Inc. for Approval of a Proposed Transaction, Docket No. TM16030248, Order dated July 29, 2016, at p. 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *N.J.S.A. 48:2-51.1*.

<sup>21</sup> *Id.*

merger petitions contain certain information as well as a requirement that the Board refrain from approval of any merger, consolidation, acquisition or change in control “unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the [four criteria delineated above].”

In its review of the proposed transaction, the Board should ensure that positive benefits will flow to CenturyLink’s customers and to the State of New Jersey. Throughout these comments, Rate Counsel proposes specific measures that would increase the probability of such benefits occurring.

#### **IV. Analysis of Proposed Transaction**

##### **A. Residential broadband deployment in CenturyLink’s service territory**

One potential benefit of the proposed transaction would be the delivery of broadband internet access to households, small businesses, and anchor institutions in New Jersey more ubiquitously, at faster speeds, and at more affordable prices than would otherwise occur. In order to assess the need for such efforts, Rate Counsel sought data regarding the present status of broadband deployment in CenturyLink’s New Jersey service area. Confidential Exhibit RC-1 to these comments, which Rate Counsel prepared based on Joint Petitioners’ confidential responses to RC-1(a) and RC-1(b), shows, by wire center: the total living units, the total broadband-enabled living units, and the percentage of living units that are broadband-enabled. Confidential RC-1 also shows by wire center the total broadband enabled living units grouped by downstream speed tiers (100 Mbps, 80



Mbps, 40-60 Mbps, 25-30 Mbps, 15-25 Mbps, 10 Mbps, 8 Mbps, 6 Mbps, 3-4 Mbps, 1.5 Mbps, 512 Kbps, and 256 Kbps).<sup>22</sup> Confidential Exhibit RC-1 shows that CenturyLink has deployed broadband internet access at some speed <<<BEGIN CONFIDENTIAL ■

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■ . END CONFIDENTIAL>>>

Two years ago, the FCC increased the nation’s broadband Internet access benchmarks to 25 Mbps download speed and 3 Mbps upload speed.<sup>24</sup> As Confidential

<sup>22</sup> CenturyLink tracks broadband “enablement” based on living units, not households, and does not track small business lines or customers within the service areas of its wire centers. Joint Petitioners response to RC-1.

<sup>23</sup> Public Notice, FCC Finds U.S. Broadband Deployment Not Keeping Pace; Updates Broadband Speed Benchmark to 25 Mbps/3 Mbps to Reflect Consumer Demand, Advances in Technology, January 29, 2015. <https://www.fcc.gov/document/fcc-finds-us-broadband-deployment-not-keeping-pace>





[REDACTED]

[REDACTED] END CONFIDENTIAL>>><sup>26</sup>

**B. Broadband deployment to anchor institutions**

Confidential Exhibit RC-7 to these comments reproduces Joint Petitioners' confidential response to RC-1(g) and 1(h), and shows, by wire center, broadband capabilities as provided by CenturyLink to anchor institutions. Speeds vary <<<BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL>>> among the anchor institutions in CenturyLink's service area. For example, the maximum broadband speed to the <<<BEGIN CONFIDENTIAL [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Rate Counsel recommends that the Joint Petitioners commit to working collaboratively with Board Staff and Rate Counsel to identify additional areas where a lack of broadband internet access at reasonable speeds are impeding anchor institutions' ability to serve their populations. CenturyLink should commit further to increasing broadband speeds in such communities, especially where alternative broadband providers are absent, and the state's economic development goals so warrant.

<sup>26</sup> Joint Petitioners response and supplemental response to RC-2.

**C. Joint Petitioners' broadband deployment plans**

CenturyLink indicates that it has not developed specific plans for New Jersey based on whether or not the merger occurs, and explains that the “proposed transaction is about the enterprise market and growing the company.”<sup>27</sup> CenturyLink indicates that it will honor existing regulatory commitments under the FCC’s Connect America Fund Phase II (“CAF-II”) to enable 1,881 homes and businesses in specific high cost areas with broadband capability. The plans call for broadband deployment to <<<BEGIN CONFIDENTIAL [REDACTED] . END CONFIDENTIAL>>><sup>28</sup>

Rate Counsel recommends that the Board seek specific information as to the locations and specific speeds of such proposed CAF-II deployment, presented in the form of the information that CenturyLink provided in response to RC-1(a) to enable Board Staff and Rate Counsel to further analyze CenturyLink’s “status quo” broadband internet access deployment plans. In addition, Rate Counsel notes that <<<BEGIN CONFIDENTIAL [REDACTED]

[REDACTED]

[REDACTED] . END CONFIDENTIAL>>><sup>29</sup> The Board should seek information from CenturyLink about the possibility of accelerating this pace. Three years is an extremely long time for communities to wait to be able to participate in today’s fast-moving global economy. Also, the FCC’s requirements for broadband speeds subsidized through the

<sup>27</sup> Joint Petitioners response to RC-3.

<sup>28</sup> Id.

<sup>29</sup> Joint Petitioners response to RC-3.

CAF program are only speeds of at least 10 megabits per second (Mbps) downstream and 1 Mbps upstream,<sup>30</sup> which means that if CenturyLink simply satisfies the FCC's bare minimum requirements, these communities will be relegated to outdated speeds. Rate Counsel recommends that the Board seek commitments from the Petitioners to deploy speeds of at least 25 Mbps to the CAF-subsidized areas.

Joint Petitioners also indicate that <<<BEGIN CONFIDENTIAL

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. END CONFIDENTIAL>>><sup>31</sup>

Rate Counsel recommends that the Board seek additional information from CenturyLink regarding the communities in which it plans to offer these faster speeds and its fiber-based advanced broadband speeds, as well as its specific time tables for accomplishing this important objective. Rate Counsel is hopeful that as CenturyLink makes decisions about when and where to deploy its most advanced broadband infrastructure that it furthers the state's goals of promoting economic development among the state's most distressed communities.<sup>32</sup>

<sup>30</sup> <https://www.fcc.gov/consumers/guides/connect-america-fund-phase-ii-faqs>

<sup>31</sup> Joint Petitioners response to RC-3.

<sup>32</sup> Whereas 73% and 76% of homes in urban and suburban communities have broadband internet access at home, only 63% of homes in rural communities do. <http://www.pewinternet.org/fact-sheet/internet-broadband/>

#### **D. Broadband subscribership in CenturyLink's service territory**

Confidential Exhibit RC-6 reproduces CenturyLink's original and supplemental response to RC-2, which shows subscribership by download and upload speeds separately for residential and business connections and separately as of year-end 2014, year-end 2015, and year-end 2016. Rate Counsel recommends that the Board seek similar information on an annual basis so that the Board can monitor progress with broadband adoption.

Rate Counsel recommends that the Petitioners commit to digital literacy programs, especially among older residents, to encourage and facilitate adoption.<sup>33</sup> The lack of deployment is, of course, an insurmountable barrier to adoption, but also other significant barriers to widespread adoption of this essential service persist, such as the need for digital literacy programs, the affordability of broadband internet access, and an understanding of the relevancy of broadband internet access to facilitating aging in place.<sup>34</sup>

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<sup>33</sup> According to Pew Center research, seniors are the group most likely to say they never go online. About four-in-ten adults ages 65 and older (41%) do not use the internet, compared with only 1% of 18- to 29-year-olds. "13% of Americans don't use the internet. Who are they?" by Monica Anderson and Andrew Perrin, Pew Research Center, September 7, 2016

<http://www.pewresearch.org/fact-tank/2016/09/07/some-americans-dont-use-the-internet-who-are-they/>

<sup>34</sup> Whereas approximately three in four households with members aged 64 and younger have broadband internet access in the home, only approximately one in two households with members aged 65 and over have internet access in the home. "Internet/Broadband Fact Sheet," Pew Research Center, <http://www.pewinternet.org/fact-sheet/internet-broadband/> site visited March 30, 2017. Data as of November 6, 2016. Households have adopted broadband internet access in the home as follows: aged 18-29 (77%); aged 30-49 (81%), aged 50-64 (75%) and 65 plus (51%). Id. The Pew Research Center also reports the percentages of groups that use the internet (i.e., not necessarily from within their own home) as follows: aged 18-29 (99%); aged 30-49 (96%), aged 50-64 (87%) and 65 plus (64%). Id.

**E. The Petitioners should commit to tangible, measureable, enforceable commitments to ensure that they flow through benefits to their customers and to the State of New Jersey.**

At first impression, the proposed transaction seems benign, and potentially beneficial to residential consumers and the New Jersey communities that CenturyLink serves. The proposed merger would help CenturyLink to compete more effectively for enterprise customers. The stronger CenturyLink is, the better off its residential customers will be. However, the transaction also poses a risk to residential and small business customers that the merging of operations and the heightened focus on enterprise customers will divert managerial attention and company investment, potentially leaving residential customers neglected. Although CenturyLink serves just a small portion of New Jersey, it is important that these customers not be neglected as CenturyLink pursues large business customers.

The Petitioners point to their advanced broadband networks as a benefit of the merger. Rate Counsel urges the Petitioners to commit to more widespread and faster residential broadband deployment as well as deployment to “anchor” institutions - schools, libraries, etc. and to commit to specific milestones to ensure timely completion of such broadband deployment plans. CenturyLink’s historic guaranteed rate of return and access to customers enabled it to deploy a ubiquitous network and establish its presence in telecommunications markets. By virtue of having historically supplied that guaranteed revenue stream, residential customers should now share in the benefits that CenturyLink will reap as it pursues new business opportunities.

CenturyLink could also offer deeper subsidies for broadband service than the federal Lifeline program calls for and commit to fund digital literacy programs.

**F. Impact on competition: the transaction would eliminate an actual and potential competitor in CenturyLink's service area and in Verizon's service area.**

As described by the Joint Petitioners, the proposed transaction “will enable the Applicants to combine their complementary networks to offer customers of enterprise services a broader range of on-net services and solutions than they currently can obtain from the Applicants individually, reduce both Applicants’ dependence on leased fiber facilities, and, by enhancing the combined company’s reach and financial profile, strengthen its ability to invest and compete for the long term.” The Petitioners state further that the “the proposed Transaction will allow the combined company not only to provide better service and a fuller suite of solutions to its base of enterprise customers, but also to serve as a stronger competitor in the retail segment to AT&T, Verizon, and others, including large cable companies that have dramatically expanded their core offerings in recent years to compete successfully for these customers.”<sup>35</sup> Some of this enhanced ability to compete will come at the expense of the loss of a competitor, namely Level 3.

The proposed transaction would eliminate a potential and actual competitor in markets for business data services (“BDS”) (previously referred to as special access services). Competition in the BDS market affects the rates, terms and conditions of

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<sup>35</sup> FCC Application, Exhibit B, Public Interest Statement, at B-1.



specialized private line circuits upon which other carriers, large users, and wireless carriers rely. These rates in turn are incorporated into the prices for goods and services provided to consumers by large users (banks, etc.) and to wireless services (wireless carriers rely on BDS circuits to connect their cell towers to the public switched network). Therefore it is in the interest of all consumers for the Board to ensure that effective competition exists. Where the CenturyLink and Level 3 footprints overlap, and in service areas where Level 3 would otherwise compete, the merger would diminish competition. Level 3 is a competitor in Verizon's service territory in New Jersey. Rate Counsel urges the Board to seek clarification from CenturyLink that it will continue to compete in Verizon's service territory in BDS markets indefinitely, or in the alternative for a minimum period of five years.<sup>36</sup>

**G. Service quality should be examined more closely.**

CenturyLink asserts that the proposed transaction will not “directly or indirectly impact” the service quality requirements identified in N.J.A.C. 14:10-1A.8 (service quality standards) and N.J.A.C. 14:10-1.A.9 (service quality reporting) or CenturyLink's compliance with these requirements.”<sup>37</sup> CenturyLink's statements are insufficient to

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<sup>36</sup> Rate Counsel notes that the FCC has an open information and document request in connection with this concern. In particular, the requested information will provide answers to the Applicant's fiber deployment, business data service (previously referred to as special access service) and plans, that address the question of the impact of the transaction on competition (i.e., the extent to which the merger would eliminate an actual or potential competitor). See *fn* 10 herein and [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0330/DA-17-296A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0330/DA-17-296A1.pdf).

<sup>37</sup> Joint Petitioners response to RC-10.

allow the Board to gauge the impact of the transaction on service quality for residential and small business consumers.

In response to Rate Counsel's questions seeking service quality data disaggregated by wire center, the Company indicated that existing service quality regulations do not require the submission of such information.<sup>38</sup> It is Rate Counsel's experience, and that of its consultant, that service quality can vary significantly among communities. Regardless of existing Board requirements, the Board should direct CenturyLink to provide this information to enable a comprehensive assessment of service quality as it is provided today, disaggregated to the wire center level, so there is a well-understood benchmark for assessing future levels of service quality, post-merger. These future comparisons will enable Board Staff and Rate Counsel to assess whether the Company's increased focus on its enterprise customers is jeopardizing the quality of service offered among the various communities it serves.

CenturyLink indicates that it has no current plans for copper retirement within New Jersey service territory.<sup>39</sup> Should such plans change, Rate Counsel urges the Board to oversee any transition to new technology by CenturyLink to ensure that the transition is smooth and customers receive adequate notice and information concerning the transition process.

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<sup>38</sup> Joint Petitioners response to parts (b) through (f) of RC-7.

<sup>39</sup> Joint Petitioners response to RC-15.

## H. Employment

CenturyLink employs <<<BEGIN CONFIDENTIAL [REDACTED] [REDACTED] END CONFIDENTIAL>>> in New Jersey.<sup>40</sup> Joint Petitioners have not yet determined post-transaction employment levels in New Jersey, nor how many of such employees will allocate some or all of their time to supporting services offered to residential and small business customers.<sup>41</sup> The Joint Petitioners indicate that there are approximately 80 Level 3 employees in New Jersey and that the “post-Transaction company will be staffed appropriately to ensure that continuity.”<sup>42</sup> The Joint Petitioners predict that the “combined companies’ impact will come not only directly through its own employment but also through the use of suppliers, contractors and vendors.”<sup>43</sup> Rate Counsel requests that the Board ascertain and confirm that post transaction there will not be negative impact for New Jersey employees or employee pension obligations as provided under N.J.S.A. 48:3-7(a). As stated by the Board in its’ Order In The Matter of the Verified Petition of XO Holdings, XO Communications Services, LLC and Verizon Communications, Inc. for Approval of a Proposed Transaction, Docket No TM16030248, (“Verizon XO”) Order dated July 29, 2016, at p.4:

The ability of the utility to fulfill pension obligations to its employees is a factor for the Board to consider pursuant to N.J.S.A. 48:3-7. N.J.S.A. 48:3-7(a) provides where it appears that the public utility or a wholly-owned subsidiary thereof maybe unable to fulfill its obligation to any

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<sup>40</sup> Joint Petitioners response to RC-16(a). Information corresponds with year-end 2016.

<sup>41</sup> Joint Petitioners response to RC-16(c) and (e). Joint Petitioners have also not determined post-transaction employees located outside of New Jersey who will be assisting with New Jersey operations. Joint Petitioners response to RC-16(d) and (f).

<sup>42</sup> Joint Petition, at 12.

<sup>43</sup> Joint Petitioners response to RC-18.

employees thereof with respect to pension benefits previously enjoyed, whether vested or contingent, the Board shall not grant its approval unless the public utility seeking the Board's approval for disposition assumes such responsibility as will be sufficient to provide that all such obligations to employees will be satisfied as they become due.

Rate Counsel recommends that even if at the moment Petitioners assert that no pension obligations currently exist for Level 3 employees, that the Board require assurances from CenturyLink that employees with an existing 401 K plan will continue to have access to the same 401 K plan, including their vested interests and prior contributions, immediately after closing, and that these Level 3 employees will be transitioned to the CenturyLink 401 K plan as soon as administratively possible.

In addition, Rate Counsel recommends that the Board mirror its holding in the Verizon XO merger transaction, and require CenturyLink to notify the Board and Rate Counsel if there is any net loss of customer facing jobs in New Jersey, greater than (15%), and provide an explanation for the change during a four (4) year period from the issuance of the Board's Order in this matter.<sup>44</sup>

#### **IV. Conclusion**

Rate Counsel welcomes innovative, advanced products and services in the voice, broadband Internet access, and video markets that are offered at affordable rates and reasonable terms and conditions. Based on the information it has reviewed thus far, Rate Counsel generally supports CenturyLink's proposed acquisition of Level 3. By making

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<sup>44</sup> I/M/O the Verified Petition of XO Holdings, XO Communications Services, LLC and Verizon Communications, Inc. for Approval of a Proposed Transaction, Docket No TM16030248, Order, dated July 29, 2016, at p.4.

CenturyLink a stronger company, the transaction will enable CenturyLink to leverage its increasingly advanced broadband network and resources to deliver broadband internet access to homes, small businesses, and anchor institutions at speeds that today's global economy requires. However, the Board must ensure that consumers are better off post the transaction. At present the benefits that flow from the transaction, as implied by the Joint Petition, are speculative, and, as Rate Counsel has discussed, above, the post-merger company's focus on enterprise customers may jeopardize the quality and variety of services offered to residential and small business customers. Therefore, consistent with the recommendations and proposals discussed in these comments, the Petitioners should provide detailed plans with time tables and the Board should impose tangible enforceable commitments on:

- improvement and expansion of Petitioner's residential broadband infrastructure and deployment plans throughout the service territory;
- improvement on broadband speeds and service tier price offerings for residential customers throughout the service territory and throughout anchor institutions such as hospitals, schools, libraries, etc;
- provision of information on an annual basis to monitor broadband adoption among residential and business customers;
- continued competition and deployment of BDS in Verizon service territory previously served by Level 3;
- service quality, pension and employment assurances.

Adoption by the Board of suggested recommendations or similar Board measures should assist in minimizing any potential adverse impact to New Jersey ratepayers.

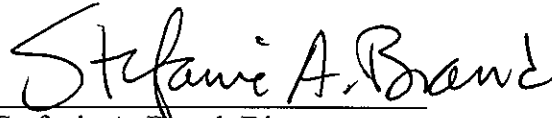
In closing, on April 13, 2017, Petitioners submitted new and important information to the FCC in connection with its review of the merger. Rate Counsel asks that the Board provide sufficient time for its Staff and for Rate Counsel to review and if necessary comment on this new information pursuant to any necessary confidentiality

agreements, before rendering a decision on the Joint Petitioners' satisfaction of state regulatory and statutory requirements regarding mergers.

Rate Counsel recommends and urges the Board to condition approval on tangible commitments to ensure that positive benefits ensue to ratepayers.

Respectfully submitted,

STATE OF NEW JERSEY  
DIVISION OF RATE COUNSEL

A handwritten signature in black ink that reads "Stefanie A. Brand". The signature is written in a cursive style and is positioned above a horizontal line.

Stefanie A. Brand, Director  
Division of Rate Counsel  
Maria T. Novas-Ruiz,  
Assistant Deputy Rate Counsel

On the Comments:  
Susan M. Baldwin

Date: April 18, 2017.

Confidential Exhibit RC-1

Residential Broadband Deployment Among Speed Tiers, by Wire Center  
(Absolute Numbers)

**Two Exhibit Pages Redacted**



Confidential Exhibit RC-2

Residential Broadband Deployment Among Speed Tiers, By Wire Center  
(Percentage Distribution)

**One Exhibit Pages Redacted**

Confidential Exhibit RC-3

Residential Broadband Deployment:  
25 Mbps and above; 10 to 25 Mbps; under 25 Mbps, By Wire Center  
(Alphabetical)

**One Exhibit Pages Redacted**

Confidential Exhibit RC-4

Residential Broadband Deployment:  
25 Mbps and above; 10 to 25 Mbps; under 25 Mbps, By Wire Center  
(Ranked by % 25 Mbps and above)

**One Exhibit Pages Redacted**

Confidential Exhibit RC-5

Joint Petitioners Response to RC-1(a) and (b)

Broadband Deployment to Households, by Speed, and by Wire Center

**One Exhibit Pages Redacted**

Confidential Exhibit RC-6

Joint Petitioners Response to RC-1(g) and (h)

Broadband Deployment to Households, by Speed, and by Wire Center

**Six Exhibit Pages Redacted**

Confidential Exhibit RC-7

Joint Petitioners Response and Supplemental Response to RC-2

Broadband Demand (Adoption)  
Residential and Small Business Consumers,  
By Speed: 2014 through 2016

**Nine Exhibit Pages Redacted**