

COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED 8/24/2020
DOCUMENT NO. 04841-2020
FPSC - COMMISSION CLERK

In the Matter of)
)
Section 63.71 Application of CenturyLink)
For Authority Pursuant to Section 214 of)
The Communications Act of 1934, As)
Amended, to Discontinue The Provision of)
Certain Packet-Based And Wavelength)
Business Services as Common Carriage)
Services and to Instead Offer Those)
Services as Private Carriage Services)

WC Docket No. __

SECTION 63.71 APPLICATION OF CENTURYLINK FOR DISCONTINUANCE AND RECLASSIFICATION AS PRIVATE CARRIAGE

CenturyLink¹ hereby applies for authority under Section 214(a) of the Communications Act, as amended, 47 U.S.C. § 214, and Section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue offering interstate Switched Ethernet, Dedicated Ethernet, and Wavelength Services on a nationwide common carrier basis and to reclassify those services as private carriage.

CenturyLink provides the following information pursuant to Section 63.71 of the Commission's rules:

1. Name and Address of the Carriers

CenturyLink
100 CenturyLink Drive
Monroe, LA 71203

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¹ This application is filed on behalf of the CenturyLink affiliates listed in Appendix A.

2. Date of Planned Service Discontinuance

Effective upon regulatory approval, CenturyLink will no longer offer these services on a common carriage basis. Current customers subscribing to these services would retain their existing services, as CenturyLink will honor all existing contracts. By this application, CenturyLink does not seek authority to cease offering the services, but merely to discontinue offering these services on a common carriage basis and to instead offer them on a private carriage basis.

3. Points of Geographic Areas of Service Affected

The regulatory relief sought in this application applies everywhere CenturyLink offers these services:

Switched Ethernet Services

Ethernet Virtual Private Line and Metro Ethernet services are available in Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming.

Metro Optical Ethernet is available in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

E-Services,² Extended Native Local Area Network, Elite Native Local Area Network, Enterprise Switched Extended Native Local Area Network, and Virtual Private Network are available nationwide.

² E-Services include E-Access (EPL, EVPL) and E-Line (EPL, EVPL).

Dedicated Ethernet Services

Ethernet Transport is available in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.

Ethernet over SONET is available in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

Ethernet Private Line is available in Alabama, Arkansas, Arizona, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, New Jersey, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.

Intercity and Metro E-Line are available nationwide.

E-Line is available in Alabama, Arkansas, Arizona, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, New Jersey, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.

Wavelength Services

Optical Wavelength is available in Alabama, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

GeoMax is available in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

Wavelength is available nationwide.

4. Brief Description of Types of Service Affected

Switched Ethernet Services are switched services purchased by business, government, and educational institution customers to connect multiple locations using Ethernet protocol in speeds up to 100 Gbps. Dedicated Ethernet Services are used by business, government, and educational customers to connect multiple locations with dedicated fiber facilities in bandwidths up to 100 Gbps. Wavelength Services are a fully managed private network solution provided over fiber facilities offering high levels of availability, reliability, and security, in bandwidths up to 100 Gbps. The attached Declaration of Theresa Smethers (Attachment C) contains additional information about each of these services.

As explained in the accompanying Statement in Support of this Application³ and in the Declaration of Theresa Smethers,⁴ CenturyLink is seeking reclassification of these services as

³ See Attachment B.

⁴ See Attachment C.

private carriage to obtain regulatory parity with its competitors. Many cable companies and CLECs, and at least two ILECs that provide services in competition with these services do so on a private carriage basis and thus have greater flexibility to make competitive offers free of Title II restrictions. Reclassification of these services as private carriage would give CenturyLink the same regulatory flexibility to meet or beat those competitive offers, which will promote competition and benefit customers. The public convenience and necessity will not be adversely affected by the reclassification of these services, because CenturyLink will honor all existing contracts, customers are being given significant notice of these changes, and the reclassification of these services to private carriage will enhance competition.

5. Brief Description of the Dates and Methods of Notice to All Affected Customers

CenturyLink sent notices to the affected customers, in accordance with Section 63.71(a) of the Commission's Rules, by United Parcel Service or U.S. Mail on August 14, 2020. A copy of the customer notification is attached to this application (Attachment A).

6. Regulatory Classification of Carrier

CenturyLink offers these services pursuant to nondominant carrier regulation.

7. Other Information

In accordance with Section 63.71(a) of the Commission's Rules, a copy of this application is being mailed concurrently with its filing to the entities listed on the attached certificate of service.

CONCLUSION

The public convenience and necessity will not be adversely affected by the discontinuance and reclassification of these services as private carriage. CenturyLink respectfully requests the Commission approve this Section 63.71 Application to discontinue and reclassify these services as private carriage.

Respectfully submitted,

CENTURYLINK

Joseph C. Cavender
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
571-730-6533
Joseph.Cavender@CenturyLink.com

By:

Craig J. Brown
Craig J. Brown *by mk*
1099 New York Avenue, NW
Suite 250
Washington, DC 20001
303-992-2503
Craig.J.Brown@CenturyLink.com

Its Attorney

DATE: August 17, 2020

Appendix A

CenturyTel and Embarq Companies

CenturyTel of Alabama, LLC	0005-8277-12
Gulf Telephone Company, LLC	0004-3337-53
CenturyTel of Mountain Home, Inc.	0001-7323-38
CenturyTel of Arkansas, Inc.	0001-7308-86
CenturyTel of South Arkansas, Inc.	0004-3121-53
CenturyTel Redfield, Inc.	0004-3122-11
CenturyTel of Northwest Arkansas, LLC	0004-5472-95
CenturyTel of Central Arkansas, LLC	0004-2533-81
CenturyTel of Colorado, Inc.	0002-7159-02
CenturyTel of Eagle, Inc.	0001-6172-65
Coastal Utilities, Inc.	0004-3336-88
Embarq Florida, Inc.	0001-8252-98
CenturyTel Of Chester, Inc.	0004-3122-03
CenturyTel Of Postville, Inc.	0003-7380-93
CenturyTel Of Idaho, Inc.	0002-6483-68
CenturyTel Of the Gem State, Inc.	0001-6234-38
Gallatin River Communications L.L.C.	0004-3337-79
CenturyTel of Odon, Inc.	0001-7484-66
CenturyTel of Central Indiana, Inc.	0003-9369-52
United Telephone Company of Indiana, Inc.	0002-9015-51
United Telephone Company of Eastern Kansas	0002-5952-47
United Telephone Company of Southcentral Kansas	0005-0517-43
United Telephone Company of Kansas	0002-3420-38
Embarq Missouri, Inc.	0002-3372-44
CenturyLink of Louisiana, LLC	0005-7862-23
CenturyTel Midwest-Michigan, Inc.	0002-7672-83
CenturyTel of Michigan, Inc.	0002-7744-87
CenturyTel of Northern Michigan, Inc.	0004-3122-45
CenturyTel of Upper Michigan, Inc.	0006-1607-41
CenturyTel of Minnesota, Inc.	0002-6419-67
Central Telephone Company	0002-3825-70
Embarq Minnesota, Inc.	0002-6434-35
Spectra Communications Group, LLC	0004-2533-73
CenturyTel of Missouri, LLC	0005-8277-87
CenturyTel of North Mississippi, Inc.	0001-7435-41
CenturyTel of Montana, Inc.	0001-5660-41
Mebtel, Inc.	0004-3337-95
Carolina Telephone and Telegraph Company, LLC	0001-9523-40
United Telephone Company of New Jersey	0004-1465-85
CenturyTel of the Southwest, Inc.	0001-6188-18
CenturyTel of Ohio, Inc.	0002-8537-11
United Telephone Company of Ohio	0002-9388-43
CenturyTel of Eastern Oregon, Inc.	0001-5620-99
CenturyTel of Oregon, Inc.	0004-3122-60
United Telephone Company of the Northwest	0001-5666-94

Appendix A

United Telephone Company of Pennsylvania, LLC	0004-1404-22
United Telephone Company of the Carolinas	0001-7770-36
CenturyTel of Claiborne, Inc.	0001-7724-82
CenturyTel of Adamsville, Inc.	0001-7738-11
CenturyTel of Ooltewah-Collegedale, Inc.	0001-7684-49
United Telephone Southeast, LLC	0001-7701-22
CenturyTel of Port Aransas, Inc.	0001-6854-29
CenturyTel of San Marcos, Inc.	0001-7127-51
CenturyTel of Lake Dallas, Inc.	0001-6775-41
Central Telephone Company of Texas	0001-6851-48
United Telephone Company of Texas, Inc.	0005-0517-68
Central Telephone Company of Virginia	0004-1839-19
CenturyTel of Washington, Inc.	0001-5846-97
CenturyTel of Inter-Island, Inc.	0001-5825-43
CenturyTel of Cowiche, Inc.	0005-7613-09
CenturyTel of Wisconsin, LLC	0002-3903-26
CenturyTel of Southern Wisconsin, LLC	0004-5470-14
CenturyTel of Fairwater, Brandon-Alto, LLC	0004-0850-80
Telephone USA of Wisconsin, LLC	0004-5472-61
CenturyTel of Central Wisconsin, Inc.	0004-3122-29
CenturyTel of Forestville, Inc.	0004-0850-98
CenturyTel of Larsen-Readfield, LLC	0004-5470-71
CenturyTel of Monroe County, LLC	0004-5470-55
CenturyTel of Northwest Wisconsin, LLC	0004-5470-22
CenturyTel of Northern Wisconsin, LLC	0004-5470-48
CenturyTel of Midwest Wisconsin, Inc.	0004-5470-06
CenturyTel of Midwest-Kendall, LLC	0004-5470-89
CenturyTel of Wyoming, Inc.	0001-6302-43
United Telephone Company of the West	0002-3916-39

Qwest Companies

El Paso County Telephone Company	0008-1312-94
Qwest Corporation	0003-7467-57

CenturyLink Communications, LLC	0018-4219-41
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Level 3 Companies

Broadwing Communications, LLC	0008-5997-06
Global Crossing Local Services, Inc.	0003-7331-44
Level 3 Communications, LLC	0003-7238-22
Level 3 Telecom of Alabama, LLC	0017-3479-72
Level 3 Telecom of Arkansas, LLC	0017-3480-12
Level 3 Telecom of Arizona, LLC	0004-3522-74
Level 3 Telecom of California, LP	0004-3511-10
Level 3 Telecom of Colorado, LP	0004-3510-86
Level 3 Telecom of D.C., LLC	0017-3480-38

Appendix A

Level 3 Telecom of Florida, LP	0004-3514-66
Level 3 Telecom of Georgia, LP	0004-3513-83
Level 3 Telecom of Idaho, LLC	0004-3522-66
Level 3 Telecom of Illinois, LLC	0004-3523-08
Level 3 Telecom of Indiana, LLC	0004-3512-76
Level 3 Telecom of Kansas City, LLC	0017-3480-61
Level 3 Telecom of Kentucky, LLC	0017-3480-87
Level 3 Telecom of Louisiana, LLC	0017-3481-11
Level 3 Telecom of Maryland, LLC	0017-3482-02
Level 3 Telecom of Minnesota, LLC	0004-3522-90
Level 3 Telecom of Mississippi, LLC	0017-3482-10
Level 3 Telecom of Nevada, LLC	0004-3522-58
Level 3 Telecom of New Jersey, LLC	0004-3514-09
Level 3 Telecom of New Mexico, LLC	0004-3514-17
Level 3 Telecom of New York, LP	0004-3514-25
Level 3 Telecom of North Carolina, LLC	0004-3514-74
Level 3 Telecom of Ohio, LLC	0004-3514-82
Level 3 Telecom of Oregon, LLC	0004-3515-73
Level 3 Telecom of South Carolina, LLC	0004-3522-82
Level 3 Telecom of Tennessee, LLC	0004-3514-58
Level 3 Telecom of Texas, LLC	0004-3511-28
Level 3 Telecom of Utah, LLC	0004-3515-57
Level 3 Telecom of Virginia, LLC	0017-3485-90
Level 3 Telecom of Washington, LLC	0004-3515-32
Level 3 Telecom of Wisconsin, LP	0004-3513-18
Level 3 Telecom Data Services, LLC	0017-3481-4
TelCove Operations, LLC	0003-7091-10

Jared Polis
Office of the Governor
136 State Capitol
Denver, CO 80203-1792

Colorado Public Utilities Commission
Suite 250
1560 Broadway
Denver, CO 80202

Ned Lamont
Office of the Governor
State Capitol
210 Capitol Avenue
Hartford, CT 06106

Connecticut Public Utilities Regulatory
Authority
10 Franklin Square
New Britain, CT 06051

John C. Carney Jr.
Office of the Governor
150 Martin Luther King Jr. Blvd. South
2nd Floor
Dover, DE 19901

Delaware Public Service Commission
Cannon Building, Suite 100
861 Silver Lake Boulevard
Dover, DE 19904

Muriel Bowser
Executive Office of the Mayor of the
District of Columbia
1350 Pennsylvania Avenue, N.W.
Suite 316
Washington, DC 20004

District of Columbia Public Service
Commission
1325 G Street, N.W.
Suite 800
Washington, DC 20005

Ron DeSantis
Office of Governor
The Capitol
400 S. Monroe St.
Tallahassee, FL 32399

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Brian Kemp
Office of the Governor
206 Washington Street
111 State Capitol
Atlanta, GA 30334

Georgia Public Service Commission
244 Washington Street, SW
Atlanta, GA 30334-9052

David Ige
Office of the Governor
Executive Chambers
State Capitol
Honolulu, HI 96813

Hawaii Public Utilities Commission
456 South King Street
Room 103
Honolulu, HI 96813

Brad Little
Office of the Governor
State Capitol
P. O. Box 83720
Boise, ID 83720

Idaho Public Utilities Commission
P. O. Box 83720
Boise, ID 83720-0074

J.B. Pritzker
Office of the Governor
207 State House
Springfield, IL 62706

Illinois Commerce Commission
Suite C-800
160 North LaSalle Street
Chicago, IL 60601

Eric Holcomb
Office of the Governor
Statehouse
Indianapolis, IN 46204-2797

Indiana Utility Regulatory Commission
PNC Center
Suite 1500 E
101 West Washington Street
Indianapolis, IN 46204

CERTIFICATE OF SERVICE

I, Marjorie Herlth, do hereby certify that I have caused the foregoing **SECTION 63.71**

APPLICATION to be:

- 1) Filed with the Secretary of the FCC via ECFS (Inbox-Section 214 Domestic Discontinuance Application;
- 2) Served via first-class U.S. Mail, postage prepaid, on the Governors of the States listed on the attached service list;
- 3) Served via first-class U.S. Mail, postage prepaid, on the Public Utility Commissions listed on the attached service list;
- 4) Served via first-class U.S. Mail, postage prepaid, or via email on the Regulatory Authority for the Tribal Nations listed on the attached service list; and
- (5) Served via first-class U.S. Mail, postage prepaid, on the Special Assistant for Telecommunications under the Secretary of Defense¹.



Marjorie Herlth

August 17, 2020

¹ Section 63.71(a) directs applicants to submit a copy of the application to the Secretary of Defense, Special Assistant for Telecommunications. However, due to restructuring within the Department of Defense, that position no longer exists. Commission staff has advised that a copy of the application be sent instead to the Department of Defense Chief Information Officer.

Kay Ivey
Office of the Governor
600 Dexter Avenue
Montgomery, AL 36130

Alabama Public Service Commission
P. O. Box 304260
Montgomery, AL 36130-4260

Mike Dunleavy
Office of the Governor
P. O. Box 110001
Juneau, AK 99811-0001

Regulatory Commission of Alaska
Suite 300
701 West 8th Avenue
Anchorage, AK 99501-3469

Doug Ducey
Office of the Governor
Executive Tower
1700 West Washington Street
Phoenix, AZ 85007

Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007-2996

Asa Hutchison
Office of the Governor
500 Woodlane Street
Little Rock, AR 72201

Arkansas Public Service Commission
P. O. Box 400
Little Rock, AR 72203-0400

Gavin Newsom
Office of the Governor
c/o State Capitol
Suite 1173
Sacramento, CA 95814

California Public Utilities Commission
California State Building
505 Van Ness Avenue
San Francisco, CA 94102-3298

Kim Reynolds
Office of the Governor
1007 East Grand Avenue
Des Moines, IA 50319

Iowa Utilities Board
Room 69
1375 East Court Avenue
Des Moines, IA 50319-0069

Laura Kelly
Office of the Governor
Capitol
300 SW 10th Avenue, Suite 241S
Topeka, KS 66612-1590

Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Andy Beshear
Office of the Governor
700 Capitol Avenue, Suite 100
Frankfort, KY 40601

Kentucky Public Service Commission
P. O. Box 615
211 Sower Boulevard
Frankfort, KY 40602-0615

John Bel Edwards
Office of the Governor
P. O. Box 94004
Baton Rouge, LA 70804

Louisiana Public Service Commission
P. O. Box 91154
Baton Rouge, LA 70821-9154

Janet T. Mills
Office of the Governor
#1 State House Station
Augusta, ME 04333-0001

Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

Larry Hogan
Office of the Governor
100 State Circle
Annapolis, MD 21401-1925

Maryland Public Service Commission
16th Floor
6 St. Paul Street
Baltimore, MD 21202-6806

Charlie Baker
Office of the Governor
Massachusetts State House
Room 280
Boston, MA 02133

Massachusetts Department of
Telecommunications & Cable
1000 Washington Street
Suite 820
Boston, MA 02118

Gretchen Whitmer
Officer of the Governor
P. O. Box 30013
Lansing, MI 48909

Michigan Public Service Commission
P. O. Box 30221
Lansing, MI 48909

Tim Walz
Office of the Governor
116 Veterans Service Building
20 W. 12th Street
St. Paul, MN 55155

Minnesota Public Utilities Commission
121 7th Place East
Suite 350
St. Paul, MN 55101-2147

Tate Reeves
Office of the Governor
P. O. Box 139
Jackson, MS 39205

Mississippi Public Service Commission
501 N. West Street, Suite 201A
Woolfolk Building
Jackson, MS 39201-1174

Mike Parson
Office of the Governor
P. O. Box 720
Jefferson City, MO 65102

Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102-0360

Steve Bullock
Office of the Governor
P. O. Box 200801
Helena, MT 59620-0801

Montana Public Service Commission
P. O. Box 202601
Helena, MT 59620-2601

Pete Ricketts
Office of the Governor
Lincoln Office/State Capitol
P. O. Box 94848
Lincoln, NE 68509-4848

Nebraska Public Service Commission
Suite 300
1200 N Street
Lincoln, NE 68508

Steve Sisolak
Office of the Governor
State Capitol Building
101 N. Carson Street
Carson City, NV 89701

Public Utilities Commission of Nevada
1150 E. William Street
Carson City, NV 89701-3109

Chris Sununu
Office of the Governor
State House
107 North Main Street
Concord, NH 03301

New Hampshire Public Utilities
Commission
Suite 10
21 South Fruit Street
Concord, NH 03301-2429

Phil Murphy
Office of the Governor
P. O. Box 001
Trenton, NJ 08625

New Jersey Board of Public Utilities
44 S. Clinton Avenue
Trenton, NJ 08625

Michelle Lujan Grisham
Office of the Governor
490 Old Santa Fe Trail, Room 400
Santa Fe, NM 87501

New Mexico Public Regulation Commission
Attn: Mr. Mike Ripperger
1120 Paseo de Peralta
P. O. Box 1269
Santa Fe, NM 87504

Andrew M. Cuomo
Office of the Governor
NYS State Capitol Building
Albany, NY 12224

New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Roy Cooper
Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301

North Carolina Utilities Commission
4325 Mail Service Center
Raleigh, NC 27699-4300

Doug Burgum
Office of the Governor
600 E Boulevard Avenue
Bismarck, ND 58505-0001

North Dakota Public Service Commission
Department 408
600 E Boulevard
Bismarck, ND 58505-0480

Mike DeWine
Office of the Governor
Riffe Center, 30th Floor
77 South High Street
Columbus, OH 43215-6117

Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

Kevin Stitt
Office of the Governor
Oklahoma State Capitol
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105

Oklahoma Corporation Commission
P. O. Box 52000
Oklahoma City, OK 73152-2000

Kate Brown
Office of the Governor
900 Court Street, NE
Suite 160
Salem, OR 97301

Public Utility Commission of Oregon
P. O. Box 1088
Salem, OR 97308-1088

Tom Wolf
Office of the Governor
508 Main Capitol Building
Harrisburg, PA 17120

Pennsylvania Public Utility Commission
Office of the Secretary
P. O. Box 3265
Harrisburg, PA 17105-3265

Gina M. Raimondo
Office of the Governor
82 Smith Street
Providence, RI 02903

Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Henry McMaster
Office of the Governor
1205 Pendleton Street
Columbia, SC 29201

Public Service Commission of South
Carolina
101 Executive Center Drive
Suite 100
Columbia, SC 29210

Kristi Noem
Office of the Governor
500 East Capitol Avenue
Pierre, SD 57501

South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Bill Lee
Office of the Governor
State Capitol, 1st Floor
Nashville, TN 37243

Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, TN 37243

Greg Abbott
Office of the Governor
P. O. Box 12428
Austin, TX 78711-2428

Public Utility Commission of Texas
1701 N. Congress Avenue
P. O. Box 13326
Austin, TX 78711-3326

Gary Herbert
Office of the Governor
350 North State Street, Suite 200
P. O. Box 142220
Salt Lake City, UT 84114-2220

Public Service Commission of Utah
Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84111

Phillip Scott
Executive Office of the Governor
109 State Street, Pavilion
Montpelier, VT 05609

Vermont Public Service Board
112 State Street
Montpelier, VT 05620-2701

Ralph Northam
Office of the Governor
P. O. Box 1475
Richmond, VA 23218

Virginia State Corporation Commission
P. O. Box 1197
Richmond, VA 23218

Jay Inslee
Office of the Governor
P. O. Box 40002
Olympia, WA 98504-0002

Washington Utilities and Transportation
Commission
P. O. Box 47250
Olympia, WA 98504-7250

Jim Justice
Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

Public Service Commission of West
Virginia
201 Brooks Street
Charleston, WV 25301

Tony Evers
Office of the Governor
115 East Capitol
Madison, WI 53702

Public Service Commission of Wisconsin
P. O. Box 7854
Madison, WI 53707-7854

Mark Gordon
Office of the Governor
2323 Carey Avenue
Cheyenne, WY 82002-0010

Wyoming Public Service Commission
Hansen Building
2515 Warren Avenue
Suite 300
Cheyenne, WY 82002

Department of Defense
Chief Information Officer
Pentagon
Washington, DC 20301

Ak-Chin Indian Community
42507 W. Peters & Nall Rd.
Maricopa AZ 85138

Cocopah Tribe of Arizona
14515 S. Veterans Dr.
Somerton AZ 85350

Ft. McDowell Yavapai Nation, Arizona
PO Box 17779
Fountain Hills AZ 85269

Navajo Nation, Arizona, New Mexico and Utah
100 Parkway
PO Box 7440
Window Rock AZ 86515

Pascua Yaqui Tribe of Arizona
7474 S. Amino De Oestte
Tucson AZ 85746

Quechan Tribe of the Fort Yuma Indian
Reservation – AZ & CA
PO Box 1899
Yuma, AZ 85366

Tohono O'odham Nation of Arizona
PO Box 837
Sellis AZ 85634

Tonto Apache Tribe of Arizona
Tonto Apache Reservation 30
Payson AZ 85541

Yavapai-Apache Nation of the Camp
Verde Indian Reservation, Arizona
2400 W. Datsi Ave.
Camp Verde AZ 86322

Yavapai-Prescott Indian Tribe
530 E. Merritt St.
Prescott AZ 86301

Southern Ute Indian Tribe of the Southern
Ute Reservation, Colorado
PO Box 315
Ignacio, CO 81137 - 0737

Ute Mountain Ute Tribe
124 Mike Wash Rd.
Towaoc, CO 81334

Seminole Tribe of Florida (Big Cypress and
Brighton Reservation
6300 Stirling Rd.
Hollywood, FL 38024

Shoshone-Bannock Tribes of the Fort Hall
Reservation
PO Box 306
Fort Hall, ID 83203-0306

Nez Perce Tribe
P.O. Box 305
Lapwai, ID 83540

Iowa Tribe of Kansas and Nebraska
Tim Rhodd
3345 B. Thrasher Rd.
White Cloud, KS 66094

Kickapoo Tribe of Indians of the Kickapoo
Reservation in Kansas
824 111th Dr.
Horton, KS 66439

Prarie Band Potawatomi Nation
16281 Q Rd
Mayetta, KS 66509

Sac and Fox Nation of Missouri in Kansas
and Nebraska
305 N. Main Street
Reserve, KS 66434

Coushatta Tribe of Louisiana
P.O. Box 818
Elton, LA 70532

Jena Band of Choctaw Indians
P.O. Box 14
Jena, LA 71342

Tunica-Biloxi Indian Tribe
150 Melicon Drive
Marksville, LA 71351

Grand Traverse Band of Ottawa and
Chippewa Indians, Michigan
2605 N. West Bay Shore Dr.
Peshawbestown, MI 49682-9275

Sault Ste. Marie Tribe of Chippewa Indians,
Michigan
523 Ashmun St.
Sault Ste. Marie, MI 49783

Lower Sioux Indian Community in the State
of Minnesota
39527 Res. Highway 1
P.O. Box 308
Morton, MN 56270

Minnesota Chippewa Tribe - Bois Forte Band
(Nett Lake)
5344 Lakeshore Dr.
Nett Lake, MN 55772

Minnesota Chippewa Tribe - Fond du Lac
Band
1720 Big Lake Rd
Cloquet, MN 55720

Minnesota Chippewa Tribe - Grand Portage Band
PO Box 428
Grand Portage, MN 55605

Minnesota Chippewa Tribe - Leech Lake
Band
190 Sailstar Dr NW
Cass Lake, MN 56633

Minnesota Chippewa Tribe - Mille Lacs Band
43408 Oodena Dr
Onamia, MN 56359

Minnesota Chippewa Tribe - White
Earth Band
P.O. Box 418
White Earth, MN 56591

Minnesota Chippewa Tribe, Minnesota (Six
component reservations: Bois Forte Band (Nett
Lake); Fond du Lac Band; Grand Portage Band;
Leech Lake Band; Mille Lacs Band; White Earth
Band)
P.O. Box 217
Cass Lake, MN 56633

Prairie Island Indian Community in the State
of Minnesota
5636 Sturgeon Lake Rd.
Welch, MN 55089

Red Lake Band of Chippewa Indians
Hwy 1 East, 24200 Council Street
Red Lake, MN 56671

Shakopee Mdewakanton Sioux Community
of Minnesota
2330 Sioux Trail NW
Prior Lake, MN 55372

Upper Sioux Community, Minnesota
P.O. Box 147
5722 Travers Lane
Granite Falls, MN 56241

Blackfeet Tribe of the Blackfeet Indian
Reservation of MT
1 Agency Square
Browning, MT 59417

Confederated Salish & Kootenai Tribes of the
Flathead Reservation
P.O. Box 278
Pablo, MT 59855-0278

Crow Tribe of Montana
P.O. Box 159
Crow Agency, MT 59022

Standing Rock Sioux Tribe of North & South
Dakota
P.O. Box D
Fort Yates, ND 58538

Omaha Tribe of Nebraska
P.O. Box 368
Macy, NE 68039

Winnebago Tribe of Nebraska
P.O. Box 687
Winnebago, NE 68071-0687

Kewa Pueblo, New Mexico (Pueblo of
Santo Domingo)
P.O. Box 99
Santo Domingo Pueblo, NM 87052

Pueblo of San Felipe, New Mexico
P.O. Box 4339
San Felipe Pueblo, NM 87001

Pueblo of San Ildefonso, New Mexico
Route 5, Box 315-A
Santa Fe, NM 87506

Pueblo of Santa Ana, New Mexico
2 Dove Rd.
Santa Ana Pueblo, NM 87004

Pueblo of Taos, New Mexico
PO Box 1846
Taos, NM 87571

Pueblo of Tesuque, New Mexico
RR 42, Box 360-T
Santa Fe, NM 87506-2632

Zuni Tribe of the Zuni Reservation,
New Mexico
P.O. Box 339
Zuni, NM 87327

Pueblo of Acoma, New Mexico
P.O. Box 309
Acoma Pueblo, NM 87034

Pueblo of Cochiti, New Mexico
P.O. Box 70
255 Cochiti St.
Cochiti, NM 87072

Pueblo of Isleta, New Mexico
P.O. Box 1270
Isleta, NM 87022

Pueblo of Laguna, New Mexico
P.O. Box 194
Laguna, NM 87026

Pueblo of Nambe, New Mexico
15A NP 102 West
Santa Fe, NM 87506

Pueblo of Picuris, New Mexico
P.O. Box 127
Pueblo View State Rd 75
Penasco, NM 87553

Pueblo of Pojoaque, New Mexico
78 Cities of Gold Rd.
Santa Fe, NM 87506

Pueblo of Sandia, New Mexico
481 Sandia Loop Rd.
Bernalillo, NM 87004

Pueblo of Zia, New Mexico
135 Capitol Square Dr.
Zia Pueblo, NM 87053-6013

Las Vegas Tribe of Paiute Indians of the Las
Vegas Indian Colony, Nevada
1 Paiute Dr.
Las Vegas, NM 89106

Shoshone-Paiute Tribes of the Duck Valley
Reservation, Nevada
P.O. Box 219
Owyhee, NV 89832

Cherokee Nation
P.O. Box 948
Talhequah, OK 74465-0948

Burns Paiute Tribe
100 Pasigo St.
Burns, OR 97720

Confederated Tribes of Warm Springs
1233 Veteran St.
PO Box C
Warm Springs, OR 97761

Confederated Tribes of Siletz Indians
of Oregon
107 SE Swan Avenue
PO Box 549
Siletz, OR 97380-0549

Confederated Tribes of the Grand Ronde
Community of Oregon
9615 Grand Ronde Rd.
Grande Ronde, OR 97347-9712

Klamath Tribes
PO Box 436
501 Chiloquin Blvd.
Chiloquin, OR 97624

Confederated Tribes of the Umatilla Indian
Reservation
46411 Ti'mine Way
Pendleton, OR 97801-0638

Cheyenne River Sioux Tribe of the
Cheyenne River Reservation, SD
PO Box 590
Eagle Butte, SD 57625

Flandreau Santee Sioux Tribe of South
Dakota
PO Box 283
Flandreau, SD 57028

Lower Brule Sioux Tribe of the Lower
Brule Reservation, SD
187 Oyate Circle
Lower Brule, SD 57548

Rosebud Sioux Tribe of the Rosebud Indian
Reservation, South Dakota
11 Legion Ave
Rosebud, SD 57570

Sisseton-Wahpeton Oyate of the Lake
Traverse Reservation
PO Box 509
Agency Village, SD 57262

Paiute Indian Tribe of Utah (Cedar Band of
Paiutes, Kanosh Band of Paiutes, Koosharem
Band of Paiutes, Indian Peaks Band of Paiutes,
& Shivwits Band of Paiutes)
440 North Paiute Drive
Cedar City, UT 84721

Confederated Tribes and Bands of the
Yakima Nation
Delano Saluskin
401 Fort Road
Toppenish, WA 98948

Confederated Tribes of the Chehalis
Reservation
420 Howanut Rd
PO Box 536
Oakville, WA 98568

Confederated Tribes of the
Colville Reservation
1 Colville Street
Nespelem, WA 99155-0150

Cowlitz Indian Tribe
1055 9th Ave., Suite B
Longview, WA 98632

Hoh Indian Tribe
PO Box 2196
2464 Lower Hoh Road
Forks, WA 98331-2196

Jamestown S'Klallam Tribe
1033 Old Blyn Hwy
Sequim, WA 98382-7670

Lower Elwha Tribal Community
2851 Lower Elwha Rd
Port Angeles, WA 98363

Lummi Tribe of the Lummi Reservation
2665 Kwina Rd
Bellingham, WA 98226-9221

Makah Indian Tribe of the Makah
Indian Reservation
PO Box 115
Highway 112 & Tribal Complex
Neah Bay, WA 98357-0115

Muckleshoot Indian Tribe
39015 172nd Ave SW
Auburn, WA 98092-9763

Nisqually Indian Tribe
4820 She-Nah-Num Dr SE
Olympia, WA 98513

Port Gamble S'klallam Tribe
31912 Little Boston Road NE
Kingston, WA 98346-9700

Puyallup Tribe of the Puyallup Reservation
3009 E. Portland Ave.
Tacoma, WA 98404-4926

Quileute Tribe of the Quileute Reservation
90 Main Street
PO Box 279
La Push, WA 98350-0279

Quinault Indian Nation
PO Box 189
1214 Aalis Drive
Taholah, WA 98587-0189

Skokomish Indian Tribe
North 80 Tribal Center Rd.
Skokomish, WA 98584

Snoqualmie Indian Tribe
PO Box 969
8130 Railroad Avenue SE
Snoqualmie, WA 98065-0969

Spokane Tribe of the Spokane Reservation
6195 Ford Wellpinit Rd
PO Box 100
Wellpinit, WA 99040

Squaxin Island Tribe of the Squaxin
Island Reservation
10 SE Squaxin Lane
Shelton, WA 98584

Suquamish Indian Tribe of the Port Madison
Reservation
PO Box 498
18490 Suquamish Way
Suquamish, WA 98392-0498

Bad River Band of the Lake Superior
Tribe of Chippewa Indians of the Bad
River Reservation, Wisconsin
PO Box 39
Odanah, WI 54861

Forest County Potawatomi Community,
Wisconsin
PO Box 340
Crandon, WI 54520

Ho-Chunk Nation of Wisconsin
PO Box 667
Black River Falls, WI 54615

Lac Courte Oreillis Band of Lake Superior
Chippewa Indians of Wisconsin
13394 W. Trepania Rd.
Hayward, WI 54843

Lac du Flambeau Band of Lake Superior
Chippewa Indians of the Lac du Flambeau
Reservation of Wisconsin
PO Box 67
Lac du Flambeau, WI 54538

Oneida Nation
PO Box 365
Oneida, WI 54155-0365

Red Cliff Band of Lake Superior Chippewa
Indians of Wisconsin
88345 Pike Rd., Hwy 13
Bayfield, WI 54814

St. Croix Chippewa Indians of Wisconsin
24663 Angeline Ave.
Webster, WI 54893

Arapaho Tribe of the Wind River
Reservation, Wyoming
337 Garfield
PO Box 1229
Lander, WY 82520-1229

Eastern Shoshone Tribe of the Wind River
Reservation, Wyoming
PO Box 538
Fort Washakie, WY 82514

August 14, 2020



100 CenturyLink Dr.
Monroe, La 71203
www.CenturyLink.com

[Customer Name]
[Address]

**Important Notice Regarding CenturyLink's Switched Ethernet,
Dedicated Ethernet and Wavelength Services
Change Effective September 30, 2020**

Dear [Customer Name]

Thank you for using CenturyLink for your business service needs. We want to make you aware of a planned change in regulatory status for Switched Ethernet, Dedicated Ethernet, and Wavelength Services offered by CenturyLink:¹

Switched Ethernet Services

Ethernet Virtual Private Line (offered by CenturyTel and Embarq Companies)²
Metro Ethernet (offered by CenturyTel and Embarq Companies)
Metro Optical Ethernet (offered by Qwest companies)³
E-Services: E-Access (EPL, EVPL), E-Line (EPL, EVPL) (offered by Level 3 Companies)⁴
Extended Native Local Area Network (offered by Level 3 Companies)
Elite Native Local Area Network (offered by Level 3 Companies)
Enterprise Switched Native Local Area Network (offered by Level 3 Companies)
Virtual Private Network (offered by Level 3 Companies)

Dedicated Ethernet Services

Ethernet Transport (offered by CenturyTel and Embarq Companies and Qwest Companies)
Ethernet over SONET (offered by Qwest Companies)
Ethernet Private Line (offered by Qwest Cos. and CenturyLink Communications, LLC)⁵
Intercity and Metro E-Line (offered by Level 3 Companies)
E-Line (offered by CenturyLink Communications, LLC)

¹ CenturyLink companies are listed in Appendix A to this letter.

² CenturyTel and Embarq services are offered in Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, New Jersey, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming.

³ Qwest services are offered in Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

⁴ Level 3 services are offered nationwide.

⁵ CenturyLink Communications, LLC services are offered in Alabama, Arkansas, Arizona, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, New Jersey, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.

ATTACHMENT A
Wavelength Services

Optical Wavelength (offered by CenturyTel and Embarq Companies, Qwest companies, and CenturyLink Communications, LLC)
GeoMax (offered by Qwest Companies)
Wavelength (offered by Level 3 Companies)

Our records indicate that you are a customer of one or more of these services.

Effective September 30, 2020, pending regulatory approval where such approval is required, these services will be reclassified from "common carriage" to "private carriage" in all areas in which they are offered. As a current customer of one or more of these services, this change in regulatory status will have **no impact** on your existing service(s) or billing and requires **no action** by you. CenturyLink will continue to provide these services to you under your existing contract(s) with CenturyLink, which will remain effective and continue to apply. The shift to private carriage will allow CenturyLink to serve you more efficiently by bringing these services into regulatory parity with the many Ethernet providers already offering their services as private carriage.

If you have questions concerning the above, please email PrivateCarriageQuestions@centurylink.com so that we may assist you.

We appreciate your business and look forward to serving your future business needs.

Sincerely,

CenturyLink

The following statement is required by the FCC:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. You may file your comments electronically through the FCC's Electronic Comment Filing System using the docket number established in the Commission's public notice for this proceeding, or you may address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of CenturyTel of Alabama, LLC; Gulf Telephone Company, LLC; CenturyTel of Central Arkansas, LLC; CenturyTel of Central Arkansas, LLC; CenturyTel of Colorado, Inc.; CenturyTel of Eagle, Inc.; Coastal Utilities, Inc.; Embarq Florida, Inc.; CenturyTel Of Chester, Inc.; CenturyTel Of Postville, Inc.; CenturyTel Of Idaho, Inc.; CenturyTel Of the Gem State, Inc.; Gallatin River Communications L.L.C.; CenturyTel of Odon, Inc.; CenturyTel of Central Indiana, Inc.; United Telephone Company of Indiana, Inc.; United Telephone Company of Eastern Kansas; United Telephone Company of Southcentral Kansas; United Telephone Company of Kansas; Embarq Missouri, Inc.; CenturyLink of Louisiana, LLC; CenturyTel Midwest-Michigan, Inc.; CenturyTel of Michigan, Inc.; CenturyTel of Northern Michigan, Inc.; CenturyTel of Upper Michigan, Inc.; CenturyTel of Minnesota, Inc.; Central Telephone Company; Embarq Minnesota, Inc.; Spectra Communications Group, LLC; CenturyTel of Missouri, LLC; CenturyTel of North Mississippi, Inc.; CenturyTel of Montana, Inc.; Mebtel, Inc.; Carolina Telephone and Telegraph Company, LLC; United Telephone Company of New Jersey; CenturyTel of the Southwest, Inc.; CenturyTel of Ohio, Inc.; United Telephone Company of Ohio; CenturyTel of Eastern Oregon, Inc.; CenturyTel of Oregon, Inc.; United Telephone Company of the Northwest; United Telephone Company of Pennsylvania, LLC; United Telephone Company of the Carolinas; CenturyTel of Cleiborne, Inc.; CenturyTel of Adamsville, Inc.; CenturyTel of Ooltewah-Collegedale, Inc.; United Telephone Southeast, LLC; CenturyTel of Port Aransas, Inc.; CenturyTel of San Marcos, Inc.; CenturyTel of Lake Dallas, Inc.; Central Telephone Company of Texas; United Telephone Company of Texas, Inc.; Central Telephone Company of Virginia; CenturyTel of Inter-Island, Inc.; CenturyTel of Cowiche, Inc.; CenturyTel of Wisconsin, LLC; CenturyTel of Southern Wisconsin, LLC; CenturyTel of Fairwater, Brandon-Alto, LLC; Telephone USA of Wisconsin; CenturyTel of Central Wisconsin, Inc.; CenturyTel of Forestville, Inc.; CenturyTel of Larsen-Readfield, LLC; CenturyTel of Monroe County, LLC; CenturyTel of Northwest Wisconsin, LLC; CenturyTel of Northern Wisconsin, LLC; CenturyTel of Midwest Wisconsin, Inc.; CenturyTel of Midwest-Kendall, LLC; CenturyTel of Wyoming, Inc.; United Telephone Company of the West; El Paso Telephone Company; Qwest Corporation; CenturyLink Communications, LLC, Broadwing Communications, LLC; Global Crossing Local Services, Inc.; Level 3 Communications, LLC; Level 3 Telecom of Alabama, LLC; Level 3 Telecom of Arkansas, LLC; Level 3 Telecom of Arizona, LLC; Level 3 Telecom of California, LP; Level 3 Telecom of Colorado, LP; Level 3 Telecom of D.C., LLC; Level 3 Telecom of Florida, LP; Level 3 Telecom of Georgia, LP; Level 3 Telecom of Idaho, LLC; Level 3 Telecom of Illinois, LLC; Level 3 Telecom of Indiana, LLC; Level 3 Telecom of Kansas City, LLC; Level 3 Telecom of Kentucky, LLC; Level 3 Telecom of Louisiana, LLC; Level 3 Telecom of Maryland, LLC; Level 3 Telecom of Minnesota, LLC; Level 3 Telecom of Mississippi, LLC; Level 3 Telecom of Nevada, LLC; Level 3 Telecom of New Jersey, LLC; Level 3 Telecom of New Mexico, LLC; Level 3 Telecom of New York, LP; Level 3 Telecom of North Carolina, LLC; Level 3 Telecom of Ohio, LLC; Level 3 Telecom of Oregon, LLC; Level 3 Telecom of South Carolina, LLC; Level 3 Telecom of Tennessee, LLC; Level 3 Telecom of Texas, LLC; Level 3 Telecom of Utah, LLC; Level 3 Telecom of Virginia, LLC; Level 3 Telecom of Washington, LLC; Level 3 Telecom of Wisconsin, LP; Level 3 Telecom Data Services, LLC; and TelCove Operations, LLC. Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

Appendix A: CenturyLink Companies**CenturyTel and Embarq Companies**

CenturyTel of Alabama, LLC
 GulfTelephone Company, LLC
 CenturyTel of Mountain Home, Inc.
 CenturyTel of Arkansas, Inc.
 CenturyTel of South Arkansas, Inc.
 CenturyTel Redfield, Inc.
 CenturyTel of Northwest Arkansas, LLC
 CenturyTel of Central Arkansas, LLC
 CenturyTel of Colorado, Inc.
 CenturyTel of Eagle, Inc.
 Coastal Utilities, Inc.
 Embarq Florida, Inc.
 CenturyTel Of Chester, Inc.
 CenturyTel Of Postville, Inc.
 CenturyTel Of Idaho, Inc.
 CenturyTel Of the Gem State, Inc.
 Gallatin River Communications L.L.C.
 CenturyTel of Odon, Inc.
 CenturyTel of Central Indiana, Inc.
 UnitedTelephone Company of Indiana, Inc.
 UnitedTelephone Company of Eastern Kansas
 UnitedTelephone Company of Southcentral Kansas
 UnitedTelephone Company of Kansas
 Embarq Missouri, Inc.
 CenturyLink of Louisiana, LLC
 CenturyTel Midwest-Michigan, Inc.
 CenturyTel of Michigan, Inc.
 CenturyTel of Northern Michigan, Inc.
 CenturyTel of Upper Michigan, Inc.
 CenturyTel of Minnesota, Inc.
 Central Telephone Company
 Embarq Minnesota, Inc.
 Spectra Communications Group, LLC
 CenturyTel of Missouri, LLC
 CenturyTel of North Mississippi, Inc.
 CenturyTel of Montana, Inc.
 Mebtel, Inc.

Carolina Telephone and Telegraph Company, LLC
 UnitedTelephone Company of New Jersey
 CenturyTel of the Southwest, Inc.
 CenturyTel of Ohio, Inc.
 UnitedTelephone Company of Ohio
 CenturyTel of Eastern Oregon, Inc.
 CenturyTel of Oregon, Inc.
 UnitedTelephone Company of the Northwest
 UnitedTelephone Company of Pennsylvania, LLC
 UnitedTelephone Company of the Carolinas
 CenturyTel of Claiborne, Inc.
 CenturyTel of Adamsville, Inc.
 CenturyTel of Ooltewah-Collegedale, Inc.
 UnitedTelephone Southeast, LLC
 CenturyTel of Port Aransas, Inc.
 CenturyTel of San Marcos, Inc.
 CenturyTel of Lake Dallas, Inc.
 Central Telephone Company of Texas
 UnitedTelephone Company of Texas, Inc.
 Central Telephone Company of Virginia
 CenturyTel of Washington, Inc.
 CenturyTel of Inter-Island, Inc.
 CenturyTel of Cowiche, Inc.
 CenturyTel of Wisconsin, LLC
 CenturyTel of Southern Wisconsin, LLC
 CenturyTel of Fairwater, Brandon-Alto, LLC
 Telephone USA of Wisconsin
 CenturyTel of Central Wisconsin, Inc.
 CenturyTel of Forestville, Inc.
 CenturyTel of Larsen-Readfield, LLC
 CenturyTel of Monroe County, LLC
 CenturyTel of Northwest Wisconsin, LLC
 CenturyTel of Northern Wisconsin, LLC
 CenturyTel of Midwest Wisconsin, Inc.
 CenturyTel of Midwest-Kendall, LLC
 CenturyTel of Wyoming, Inc.
 UnitedTelephone Company of the West

Qwest Companies

El Paso County Telephone Company
 Qwest Corporation

ATTACHMENT A

CenturyLink Communications, LLC

Level 3 Companies

Broadwing Communications, LLC
Global Crossing Local Services, Inc.
Level 3 Communications, LLC
Level 3 Telecom of Alabama, LLC
Level 3 Telecom of Arkansas, LLC
Level 3 Telecom of Arizona, LLC
Level 3 Telecom of California, LP
Level 3 Telecom of Colorado, LP
Level 3 Telecom of D.C., LLC
Level 3 Telecom of Florida, LP
Level 3 Telecom of Georgia, LP
Level 3 Telecom of Idaho, LLC
Level 3 Telecom of Illinois, LLC
Level 3 Telecom of Indiana, LLC
Level 3 Telecom of Kansas City, LLC
Level 3 Telecom of Kentucky, LLC
Level 3 Telecom of Louisiana, LLC
Level 3 Telecom of Maryland, LLC
Level 3 Telecom of Minnesota, LLC
Level 3 Telecom of Mississippi, LLC
Level 3 Telecom of Nevada, LLC
Level 3 Telecom of New Jersey, LLC
Level 3 Telecom of New Mexico, LLC
Level 3 Telecom of New York, LP
Level 3 Telecom of North Carolina, LLC
Level 3 Telecom of Ohio, LLC
Level 3 Telecom of Oregon, LLC
Level 3 Telecom of South Carolina, LLC
Level 3 Telecom of Tennessee, LLC
Level 3 Telecom of Texas, LLC
Level 3 Telecom of Utah, LLC
Level 3 Telecom of Virginia, LLC
Level 3 Telecom of Washington, LLC
Level 3 Telecom of Wisconsin, LP
Level 3 Telecom Data Services, LLC
TelCove Operations, LLC

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

)
)
) Section 63.71 Application of CenturyLink
) For Authority Pursuant to Section 214 of
) The Communications Act of 1934, As
) Amended, to Discontinue the Provision of
) Certain Packet-Based and Wavelength
) Business Services as Common Carriage
) Services and to Instead Offer Those
) Services as Private Carriage Services
)

WC Docket No. ___

**STATEMENT IN SUPPORT OF CENTURYLINK'S APPLICATION
FOR DISCONTINUANCE AND RECLASSIFICATION AS
PRIVATE CARRIAGE**

Joseph C. Cavender
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
571-730-6533
Joseph.Cavender@CenturyLink.com

Craig J. Brown
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
303-992-2503
Craig.J.Brown@CenturyLink.com

August 17, 2020

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II. RECLASSIFICATION OF CENTURYLINK'S PACKET-BASED SERVICES AS PRIVATE CARRIAGE WOULD BE IN THE PUBLIC INTEREST.....	11

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Section 63.71 Application of CenturyLink)
For Authority Pursuant to Section 214 of)
The Communications Act of 1934, As)
Amended, to Discontinue the Provision of)
Certain Packet-Based and Wavelength)
Business Services as Common Carriage)
Services and to Instead Offer Those)
Services as Private Carriage Services)

WC Docket No. ___

**STATEMENT IN SUPPORT OF APPLICATION FOR
DISCONTINUANCE AND RECLASSIFICATION AS PRIVATE CARRIAGE**

CenturyLink¹ hereby applies for authority under Section 214(a) of the Communications Act, 47 U.S.C. § 214(a), and Section 63.71 of the Commission’s rules, 47 C.F.R. § 63.71, to discontinue offering Switched Ethernet, Dedicated Ethernet, and Wavelength Services as common carriage and to reclassify those services as private carriage.²

INTRODUCTION AND SUMMARY

In the *BDS Order*, the Commission held that the packet-based business data services (BDS) of the major cable companies, as well as those of a CLEC (BT Americas) and an ILEC (ACS), are private carriage.³ In December, the Commission extended this private carriage classification to

¹ This application is filed on behalf of the CenturyLink affiliates listed in Appendix A.

² For ease of exposition, CenturyLink will refer to these services in this Statement as “packet-based services,” although some of these services also use wavelength technologies.

³ *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Report and Order, 32 FCC Rcd 3459, ¶¶ 267-85 (2017) (“*BDS Order*”), *remanded in part, Citizens Telecomms. Co. of Minn. v. FCC*, 901 F.3d 991 (8th Cir. 2008), *mandate stayed* (Order, 8th Cir., November 9, 2018).

AT&T's packet-based BDS.⁴ These classification decisions crystalized a significant regulatory disparity between these providers, which offer packet-based services on a private carriage basis, and carriers like CenturyLink, which have presumptively offered such packet-based services on a common carrier basis. To restore regulatory parity with its competitors, CenturyLink submits this application to reclassify the packet-based business services listed in the accompanying Application, and described in the supporting declaration of Theresa Smethers,⁵ as private carriage.⁶

The current regulatory disparity hinders full and fair competition, which in turn harms customers of packet-based business services. These packet-based services are offered in an intensely competitive marketplace, and the complexity and sophistication of these services often require the ability to engage in targeted offers to win customers. As private carriers, cable companies and others have broad flexibility to tailor their offerings to the individualized needs of each customer. CenturyLink often cannot respond to these offers as aggressively as it would like because of its common carrier obligations. Subjecting CenturyLink to common carrier obligations that do not apply to its competitors thus skews competition and reduces CenturyLink's ability to be fully responsive to its customers.

⁴ See *Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecommunications Services Provided on a Common Carriage Basis and Reclassify Those Services as Private Carriage Services*, WC Docket No. 19-323, Public Notice, 32 FCC Rcd 11069 (2019) (noting that AT&T's application would be deemed granted automatically on December 28, 2019 unless the Commission notified AT&T that its grant would not be automatically effective) (Public Notice of AT&T Application).

⁵ Declaration of Theresa Smethers in Support of Application, attached to Application as Attachment C ("Smethers Decl.").

⁶ CenturyLink is seeking reclassification of these services to the extent they are offered on an exchange access or interstate, interexchange basis.

To the extent common carrier regulation still applies to ILEC packet-based services, that is largely an historical accident. When packet-based technologies emerged more than two decades ago, ILECs originally offered those services as tariffed common carrier offerings, while CLECs and cable companies offered competitive alternatives on a largely unregulated basis. In 2007 and 2008, the Commission declined to grant CenturyLink and other ILECs forbearance from Title II for their packet-based services.⁷ The agency's principal reason—ironically—was to maintain regulatory parity: the agency *assumed* that all non-ILEC packet-based services were also subject to common carrier regulation.⁸ The *BDS Order* was the first time the Commission actually considered whether any particular cable or CLEC packet-based service was common or private carriage on a full record, and it found—contrary to its prior assumptions—that many of these services had been private carriage all along.

Now that the Commission has clarified that most of CenturyLink's competitors are private carriers, the principle of regulatory parity cuts the other way. Indeed, in the *BDS Order*, the Commission made clear that it was not “prejudg[ing]” the classification of any other packet-based services in today's marketplace, and that an ILEC's services “potentially could be appropriately

⁷ See *Petition of the Embarq Local Operating Companies for Forbearance under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements, Petition of the Frontier and Citizens ILECs for Forbearance under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, WC Docket No. 06-147, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007) (“*Embarq/Frontier Forbearance Order*”), *aff'd sub nom. Ad Hoc v. FCC*, 572 F.3d 903 (2009); *Qwest Petition for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008).

⁸ See, e.g., *Embarq/Frontier Forbearance Order* ¶ 59 (finding that Embarq and Frontier are “ask[ing] us to go beyond the relief the Commission has granted any competitive LEC or nondominant interexchange carrier and allow them to offer certain broadband telecommunications services free of Title II regulation, thus creating a disparity in regulatory treatment between petitioners and their competitors”).

classified as private carriage, as well.”⁹ The Commission did explain, however, that if a carrier subject to Section 214 offered a packet-based service initially as common carriage, that carrier “would first need to obtain discontinuance approval” under Section 214 to have its services reclassified as private carriage.¹⁰ Although the Commission has never made a formal determination regarding the status of CenturyLink’s current packet-based services, the Commission’s prior orders have assumed that those services are common carriage. Thus, CenturyLink is filing this “discontinuance” application to have the services covered by this application formally reclassified as private carriage.

Reclassification of these services easily meets Section 214’s standard, which requires the change to have no adverse effect on the public convenience and necessity. There is ubiquitous facilities-based competition for the packet-based services at issue. The customers for these services are highly sophisticated enterprises or other large purchasers, such as wireless carriers, who negotiate the rates and terms for their services on a case-by-case basis. As the Commission found in the *BDS Order*, “[o]ur market analysis does not show compelling evidence of market power in incumbent LEC provision of [packet-based] services, particularly for higher bandwidth services.”¹¹ Indeed, in the context of today’s marketplace, retention of common carriage restrictions on CenturyLink but not its competitors harms customers by constraining CenturyLink’s ability to meet competition.

The transition of these services to private carriage will be seamless. Although CenturyLink must seek this relief in the form of “discontinuance,” CenturyLink has no plans to

⁹ *BDS Order* ¶ 279.

¹⁰ *Id.* ¶ 279 & n.700.

¹¹ *BDS Order* ¶ 87; *see also Citizens*, 901 F.3d at 1012 (affirming decision not to re-impose any regulation on Ethernet services).

discontinue any current service. Granting this application would not require any immediate changes in any of these services, and CenturyLink would honor existing contracts and continue to make any required universal service contributions. Rather, “discontinuance” would merely give CenturyLink greater flexibility in how it offers and prices these services in the future. The Commission should thus promptly grant the application.

I. REGULATORY BACKGROUND

Although the Commission has never formally considered whether CenturyLink’s current packet-based offerings are common carriage or private carriage, the Commission has always assumed they were common carriage, and CenturyLink has abided by common carrier requirements accordingly. Nonetheless, many of CenturyLink’s competitors are offering these same services with the additional flexibility that private carriage allows. This regulatory disparity developed largely as an historical accident. To place this application in context, it is useful to review this regulatory history, and how this harmful, asymmetrical regulatory regime arose.

Forbearance Petitions from the 2000s. In the earliest days of packet-based services, ILECs offered such services as tariffed common carrier services, whereas both CLECs¹² and cable

¹² *Hyperion Telecommunications, Inc. Petition Requesting Forbearance*, CC Docket No. 97-146, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997) (granting petitions seeking permissive detariffing for provision of interstate exchange access services by providers other than the incumbent LEC). The Commission had also deemed all traditional interexchange carriers non-dominant and had adopted mandatory detariffing of their interexchange services—rulings that applied to common carrier packet-based services to the extent they were offered on an interexchange basis. See *Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271 (1995) (reclassifying legacy AT&T as a non-dominant interexchange carrier), subsequent history omitted; *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended*, Second Report and Order, 11 FCC Rcd 20730 (1996) (“*Interexchange Forbearance Order*”) (Commission would “no longer require or allow non-dominant interexchange carriers to file tariffs pursuant to Section 203 for their interstate, domestic, interexchange services”), subsequent history omitted.

providers¹³ could offer competing services on a more deregulated, and detariffed, basis. Verizon was the first ILEC to seek greater regulatory parity. In December 2004, it filed a petition for forbearance from common carriage requirements for all of its “packet-switched services capable of 200 Kbps in each direction,” which specifically included its “IP-VPN services and Ethernet services.”¹⁴ A four-member Commission, however, failed to reach a majority on Verizon’s Petition within the statutory time period, and it was therefore “deemed granted” in 2006.¹⁵ Thus, beginning in 2006, Verizon was freed from all common carriage regulation for its packet-based services.

The other ILECs quickly filed their own petitions for similar relief, but the Commission declined to give CenturyLink and the other ILECs the same relief that Verizon had gained. Instead, the Commission only granted forbearance from dominant carrier regulation, including the tariffing requirements and price cap regulation.¹⁶ In separate orders, it granted the same relief

¹³ See *Inquiry Concerning High-Speed Access to Internet over Cable and Other Facilities*, GN Docket No. 00-185 and CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) (“*Cable Broadband Order*”), subsequent history omitted. In the *Cable Broadband Order*, the Commission held that cable broadband internet access service was an information service, but also held that: (1) cable broadband transmission offered wholesale to third-party ISPs was private carriage (*id.* ¶ 55); and (2) even if cable modem service were a common carrier service, the Commission tentatively concluded that it would nonetheless forbear from applying Title II requirements to such services (*id.* ¶ 95).

¹⁴ Letter from Edward Shakin, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 04-440, dated February 7, 2006, at 2 & Attachment 1; see also Petition of the Verizon Telephone Companies for Forbearance, WC Docket No. 04-440 (filed Dec. 20, 2004) (seeking forbearance from applying “Title II and the *Computer Inquiry* rules” to “any broadband services offered by Verizon”).

¹⁵ See *Verizon Telephone Companies’ Petition for Forbearance from Title II and Computer Inquiries Rules with Respect to their Broadband Services Is Granted by Operation of Law*, News Release, WC Docket No. 04-440 (released March 20, 2006). See also *Sprint Nextel Corp. v. FCC*, 508 F.3d 1129 (D.C. Cir. 2007) (holding that the Commission’s deadlocked vote did not constitute reviewable agency action).

¹⁶ See, e.g., *Embarq/Frontier Forbearance Order* ¶¶ 16-55. Detariffing was mandatory, to ensure consistency with the mandatory detariffing of interexchange services. See *id.* ¶ 41 (“to the extent petitioners wish to take advantage of the relief granted in this Order for any particular

for BOC-provided packet-based services to the extent they were provided on an interstate, *interexchange* basis.¹⁷ In granting such relief, the Commission specifically acknowledged that, even as of 2007, the marketplace for packet-based services was subject to intense competition from cable companies, CLECs and others.¹⁸ As a result of these orders, CenturyLink and other ILECs generally obtained relief from rigid *ex ante* rate regulation, which gave them a degree of flexibility to respond more efficiently to competitive offers.

But the Commission declined to grant forbearance from Title II, including Sections 201, 202, and 208 of the Communications Act. Ironically, the Commission's principal reason for denying the request was ostensibly to *avoid* regulatory disparities. The Commission argued that the petitioning ILECs were "ask[ing] us to go beyond the relief the Commission has granted any competitive LEC or nondominant interexchange carrier and allow it to offer certain broadband telecommunications services free of Title II regulation, thus *creating a disparity in regulatory treatment* between the petitioners and their competitors."¹⁹ The Commission claimed that such "preferential treatment" for those ILECs was not warranted.²⁰ Notably, in making these findings, service specified in their petitions, they must follow our rules for nondominant interexchange carriers in connection with that service").

¹⁷ See, e.g., *Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207 (2007) (eliminating dominant carrier regulation of CenturyLink's interstate, interexchange voice and data services) ("*Qwest Section 272 Sunset Order*").

¹⁸ See, e.g., *Embarq/Frontier Forbearance Order* ¶ 21 ("There are a myriad of providers prepared to make competitive offers to enterprise customers demanding packet-switched data services located both within and outside any given incumbent LEC's service territory," and "[t]hese competitors include the many competitive LECs, cable companies, systems integrators, equipment vendors, and value-added resellers providing services that compete against the petitioners").

¹⁹ *Id.* ¶ 59 (emphasis added).

²⁰ *Id.*; see also *id.* ¶ 60 ("disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers").

the Commission simply *assumed* that the competitors of CenturyLink and other ILECs were common carriers.²¹ The Commission did not actually consider the regulatory classification of any of CenturyLink's competitors' services, nor did it consider the possibility that many of those providers were offering packet-based services on a private carriage basis.

The effect of these decisions was that, while CenturyLink could more efficiently respond to competitive offerings (because it no longer had to modify tariffs to do so), CenturyLink was still limited in its ability to tailor its offerings to the individualized needs of customers as its private carriage competitors were doing. Thus, while private carriers (like the cable companies) can target specific customers with uniquely tailored offers, CenturyLink's ability to respond is constrained by the regulatory overhang of the Title II requirements.²²

The BDS Proceedings. These issues next arose in the business data services (BDS) proceeding.²³ There, three major cable companies (Comcast, Charter, and Mediacom), along with a CLEC (BT Americas) and an ILEC (Alaska Communications Services (ACS)), argued that their packet-based services had always been private carriage offerings and should not be subjected to Title II.²⁴ These providers argued that they make case-by-case decisions about whether to offer packet-based services to given customers and "make highly individualized decisions regarding any rates and terms they do offer for the relevant categories of service in order to meet the particular needs of a given customer."²⁵ They also noted that their customers

²¹ See, e.g., *id.* ¶ 60.

²² See Smethers Decl. ¶¶ 3, 10-15.

²³ *BDS Order* ¶¶ 267-85.

²⁴ *Id.* ¶¶ 271-73.

²⁵ *Id.* ¶¶ 271-72.

have the size and sophistication to demand such uniquely tailored offerings.²⁶ The Commission agreed that these companies' services were more properly categorized as private carriage, and thus it declined to subject their packet-based services to common carrier regulation.²⁷

The *BDS Order* was the first time the Commission actually made a classification determination with respect to any non-ILEC packet-based service. The Commission acknowledged that its decision formalized a significant regulatory asymmetry between services offered by cable companies and perhaps many CLECs as well (which generally have been private carriage) and ILEC services (which generally have been common carriage). In so doing, the Commission emphasized that it did not intend to “prejudge the classification of services being offered in the marketplace today or in the future—whether by competitive providers or incumbent LECs—which potentially could be appropriately classified as private carriage, as well.”²⁸ The Commission nonetheless explained that “[w]here a provider subject to section 214 of the Act initially offers a given interstate service on a common carriage basis, that provider first would need to obtain discontinuance approval for that common carrier offering before offering that service on a private carriage basis.”²⁹ Thus, to the extent CenturyLink’s services today remain common carriage, the Commission invited ILECs like CenturyLink to file discontinuance applications to formally reclassify their existing packet-based services as private carriage.

²⁶ *Id.* ¶ 272.

²⁷ *Id.* ¶¶ 267-85.

²⁸ *See id.* ¶ 279.

²⁹ *Id.* ¶ 279 n.700. “By contrast, that would not be the case with respect to a service that a provider introduces as a private carriage offering in the first instance.” *Id.*; *see also id.* ¶ 273 n.678 (decision that ACS’s Ethernet services are private carriage does not apply to any services listed in ACS’s forbearance petition for which it received forbearance only from dominant carrier regulation in 2007).

Late last year, AT&T did just that. On October 21, 2019, AT&T filed an application seeking to discontinue its AT&T Dedicated Ethernet, Ethernet Private Line Service-Wide Area Network, AT&T Ultravailable Network, and AT&T Switched Ethernet on a nationwide common carrier basis and to reclassify those services as private carriage.³⁰ Despite opposition from INCOMPAS,³¹ the Commission permitted AT&T's application to be deemed granted automatically on December 28, 2019.³² CenturyLink seeks the same relief in this application.

II. RECLASSIFICATION OF CENTURYLINK'S PACKET-BASED SERVICES AS PRIVATE CARRIAGE WOULD BE IN THE PUBLIC INTEREST

CenturyLink is seeking regulatory parity with cable companies and other competitors by filing this discontinuance application to reclassify the following packet-based offerings as private carriage: Switched Ethernet, Dedicated Ethernet, and Wavelength Services. These services are described in more detail in the accompanying Declaration of Theresa Smethers.³³ In the context of these highly competitive services, the Section 214 standards for "discontinuing" and reclassifying these services as private carriage are easily satisfied.

Section 214 of the Communications Act provides that no carrier shall discontinue service unless the Commission certifies that "neither the present nor future public convenience and necessity will be adversely affected" by the discontinuance.³⁴ Unlike the typical discontinuance case, however, CenturyLink is not proposing to cease offering any of these services, but merely

³⁰ Section 63.71 Application of AT&T for Discontinuance and Reclassification as Private Carriage, WC Docket No. 19-323 (filed Oct. 21, 2019).

³¹ Opposition of INCOMPAS, WC Docket No. 19-323 (Dec. 12, 2019); Letter from Steven A. Augustino, Counsel to INCOMPAS, WC Docket No. 19-323 (Dec. 19, 2019).

³² See Public Notice of AT&T Application at 1.

³³ Smethers Decl. ¶¶ 5-8.

³⁴ 47 U.S.C. § 214(a).

to “discontinue” the common carriage classification of these existing services.³⁵ The question here, then, is whether reclassification of these existing services as private carriage would adversely affect the public convenience and necessity. That inquiry turns principally on the Commission’s assessment of whether the reclassification would adversely affect competition.³⁶ Here, reclassification would be strongly in the public interest.

First, CenturyLink offers these services in an environment that is intensely and irreversibly competitive. The Commission has repeatedly and consistently found that packet-based services are subject to the fiercest type of competition. Most recently, in its *BDS Order*, the Commission explained that “[o]ur market analysis does not show compelling evidence of market power in incumbent LEC provision of [packet-based] services, particularly for higher bandwidth services.”³⁷ As Ms. Smethers explains, “virtually every customer opportunity [for

³⁵ In a typical discontinuance case, in which the carrier is in fact ceasing to offer the service, the Commission considers “a number of factors in balancing the interests of the carrier and the affected user community,” including “(1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.” *In re Verizon Telephone Companies; Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd. 22737, 22742 (2003).

³⁶ Compare *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Serv. Obligations of Broadband Providers; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Co. Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III & ONA Safeguards & Requirements; Conditional Petition of the Verizon Tel. Companies for Forbearance Under 47 U.S.C. § 160(c)*, 20 FCC Rcd 14853, 14907–08 (2005) (“*Wireline Broadband Order*”).

³⁷ *BDS Order* ¶ 87; see also *id.* ¶ 83. See also *Citizens*, 901 F.3d at 1012 (affirming decision not to re-impose any regulation on Ethernet services); *Ad Hoc Telecomms. Users Comm. v. FCC*, 572 F.3d 903, 904, 909-10 (D.C. Cir. 2009) (affirming original 2007 decision to forbear from tariffing and price cap regulation for Ethernet services).

these services] is contested, typically by multiple facilities-based providers.”³⁸ Given this level of competition, the Commission has already determined that a variety of providers’ packet-based offerings, including cable, CLEC, and ILEC offerings, can be properly classified as private carriage. Now that the Commission has clarified that many of CenturyLink’s competitors are private carriers, the logic of the Commission’s *Embarq/Frontier Forbearance Order* and analogous orders applies here: “disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.”³⁹

The packet-based marketplace has become only more competitive since the Commission made its findings in the BDS proceeding. Many facilities-based providers offer packet-based services (and other competing services), and no provider has a high national market share.⁴⁰ Vertical Systems, which analyzes Ethernet services, has reported that “[p]rice compression, particularly for high speed services, continue to limit Ethernet revenue growth”⁴¹ and that “[a]ctive fiber build-outs across the U.S. are enabling Ethernet footprint expansions to serve a broader base of mid-market customers.”⁴²

Given the intensely competitive nature of the packet-based marketplace, CenturyLink cannot exercise market power over the pricing or terms of such services. Accordingly, there is no longer any need to subject these CenturyLink services to common carrier regulation,

³⁸ See Smethers Decl. ¶¶ 2, 10.

³⁹ *Embarq/Frontier Forbearance Order* ¶ 60.

⁴⁰ See, e.g., 2019 U.S. Carrier Ethernet Leaderboard, Vertical Systems (Feb. 2020), <https://www.verticalsystems.com/2020/02/20/2019-us-ethernet-leaderboard/#:~:text=CenturyLink%20continues%20to%20hold%20first,across%20the%202019%20LEADERBOARD%20providers.>

⁴¹ *Id.*

⁴² *Id.*

particularly when many of its competitors are not subject to such restrictions. To the contrary, in today's competitive environment, the fact that some competitors are private carriers and some are common carriers *harms* consumers because retention of the Title II pricing standards prevents common carriers from fully responding to private carriers' more flexible marketplace offers. In a marketplace as complex and sophisticated as business-level, packet-based services, competitors have to be ready to respond to the marketplace with offers tailored to individual customer's needs. CenturyLink's private carrier competitors can and do engage in these types of individualized offers, but CenturyLink's ability to respond is hampered by the legacy Title II restrictions.

As Ms. Smethers explains, CenturyLink's private carriage competitors "are increasingly targeting individual customers or specific groups of customers with offerings that are specifically tailored to their individualized needs."⁴³ CenturyLink would often like to counter these offers with similarly tailored offers, but the overhang of Title II regulation constrains CenturyLink's ability to do so.⁴⁴ And regardless of how CenturyLink chooses to respond, CenturyLink must spend time and resources to consider the implications of common carrier regulation, time and resources that its private carriage competitors are able to avoid, allowing them to be quicker and more efficient than CenturyLink.⁴⁵

For these reasons, reclassification would not "adversely affect" competition or the public interest; to the contrary, it would *promote* competition by facilitating more aggressive competitive offers made more quickly. In that regard, CenturyLink's lack of market power over these packet-

⁴³ See Smethers Decl. ¶ 12.

⁴⁴ See *id.* ¶ 12-15.

⁴⁵ See *id.* ¶¶ 3, 15.

based services should be determinative. In the *BDS Order*, the Commission acknowledged that “our precedent has generally identified market power as a prerequisite for potentially compelling common carriage” for services that are currently offered as private carriage.⁴⁶ Just as the Commission would have no grounds to *compel* CenturyLink to offer these types of services today as common carriage in the first instance, so too would the Commission have no basis to force CenturyLink to *continue* to offer these services as common carriage by denying this application.

The Commission also recognized in the *BDS Order* that, “[a]lthough some commenters seek to minimize the perceived extent of regulatory burdens that would flow from compelled common carriage [on cable companies], the Commission itself has acknowledged that meaningful burdens do, in fact, flow from common carrier treatment.”⁴⁷ Today, many of CenturyLink’s competitors offer their packet-based services on a private carriage basis, including not just the major cable companies and AT&T, but perhaps a number of CLECs as well. Given the competitiveness of the packet-based marketplace, and the fact that many competitors in that marketplace are already private carriers, there is no longer any legitimate justification for continuing to subject CenturyLink to the “meaningful” burdens of common carriage.⁴⁸

Second, reclassification would not adversely affect the public convenience. CenturyLink plans to continue offering these services and will honor existing contracts. The only difference will be the change in regulatory classification. And, in that regard, customers will perceive little

⁴⁶ *BDS Order* ¶ 282.

⁴⁷ *Id.*

⁴⁸ The FCC also found “generalized assertions” about the “perceived benefits” of common carriage or “remedying perceived risks of harms” from private carriage (such as “strategic denials” of service) were not sufficient to declare the cable companies’ services to be common carriage. *BDS Order* ¶ 284.

or no difference in the manner in which these services are offered, other than that CenturyLink will be free to compete more aggressively and to consider each opportunity on its own merits.⁴⁹

Indeed, CenturyLink's packet-based services, as offered today, already share certain characteristics with private carriage.⁵⁰ For example, CenturyLink's services are operationally very similar to its private carriage competitors' offerings, and are direct substitutes that compete head-to-head with them in the marketplace.⁵¹ The rates and terms for these packet-based services are, by their nature, highly negotiated.⁵² As the Commission has noted, the customers for such services "include large wireless carriers, other large service providers, or enterprises."⁵³ Accordingly, like its private carriage competitors, CenturyLink makes individualized decisions about rates and terms to meet the needs of a given customer, within the limits permitted by common carriage. As the Commission noted in the *BDS Order*, the types of customers that

⁴⁹ Reclassification also would theoretically give CenturyLink the ability to make case-by-case decisions about whether to offer service to any particular customer, but this change should have little practical effect. *See, e.g., NARUC v. FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976) ("*NARUC I*") ("a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal"). In today's intensely competitive environment, CenturyLink typically has no marketplace incentive to turn away potential customers. Moreover, as explained above, facilities-based competition for these packet-based services is so robust and entrenched that, even if CenturyLink did decline to serve a potential customer, other facilities-based competitors would rush in to fill the gap. In all events, reclassification would merely give CenturyLink the same flexibility that many of its facilities-based competitors have.

⁵⁰ The D.C. Circuit has explained that some characteristics of a communications service exist within a "grey area" between "*per se* common carriage" and "*per se* private carriage," and thus can be consistent with either classification. *See, e.g., Cellco P'ship v. FCC*, 700 F.3d 534, 547-49 (D.C. Cir. 2012).

⁵¹ *See Smethers Decl.* ¶¶ 5-8.

⁵² *See id.*

⁵³ *BDS Order* ¶ 272.

purchase packet-based services have the “size and sophistication” to demand uniquely tailored offerings.⁵⁴

The Commission also noted that the cable companies maintained generally available marketing materials, standard terms of agreement, and rate sheets, but held that these materials did not constitute an indifferent holding out of the services. Specifically, the Commission held that the rate sheets did not constitute a formal, take-or-leave-it offer but were intended to act as a starting point for negotiations. The Commission concluded that the mere existence of uniform terms in this context did not mean that the provider expected any potential user to accept them outright, as if ordering from a tariff.⁵⁵ CenturyLink similarly sometimes lists standard rates and terms for its packet-based services in its Interstate Service Guides, but like the cable companies, in practice these service guides are often the starting point for negotiations.⁵⁶ For all these reasons, reclassification will have no negative impact on customers.

Finally, reclassification will not adversely affect universal service. Section 254(d) of the Act gives the Commission the authority to require any “provider of interstate telecommunications . . . to contribute to the preservation and advancement of universal service if the public interest so requires.”⁵⁷ The Commission has exercised that authority to require universal service contributions from certain types of private carriers.⁵⁸ In the *BDS Order*, when it declared the

⁵⁴ *Id.*; see also *id.* ¶ 276 and n.686.

⁵⁵ *Id.* ¶ 278.

⁵⁶ See Smethers Decl. ¶¶ 5-8.

⁵⁷ 47 U.S.C. § 254(d).

⁵⁸ See, e.g., *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Further Notice of Proposed Rulemaking, 27 FCC Rcd 5357, ¶ 9 (2012) (explaining that in 1997, the Commission exercised its permissive authority under Section 254(d) of the Act to require private carriers to contribute to the Fund).

cable companies' services to be private carriage, the Commission noted that "the Commission's universal service rules require certain contributions from private carriers" and emphasized that "[n]othing in this Order modifies those universal service contribution rules."⁵⁹ The same would be true here and CenturyLink will continue to make universal service support contributions to the same extent that its private carrier competitors are contributing on their private carriage services.

CONCLUSION

For the foregoing reasons, the Commission should grant the application.

Respectfully submitted,

CENTURYLINK

By: Craig J. Brown
Craig J. Brown *ky mh*
CenturyLink, Inc.
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
303-992-2503
Craig.J.Brown@CenturyLink.com

Its Attorney

Joseph C. Cavender
1099 New York Avenue, N.W.
Suite 250
Washington, DC 20001
571-730-6533
Joseph.Cavender@CenturyLink.com

DATE: August 17, 2020

⁵⁹ *BDS Order* ¶ 282 n.716 (responding to Public Knowledge argument that cable companies providing packet-based services should still be required to contribute to the universal service fund if they were declared to be private carriage).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Section 63.71 Application of CenturyLink) WC Docket No. ___
For Authority Pursuant to Section 214 of)
The Communications Act of 1934, As)
Amended, to Discontinue the Provision of)
Certain Packet-Based And Wavelength)
Business Services as Common Carriage)
Services and to Instead Offer Those)
Services as Private Carriage Services)

**DECLARATION OF THERESA SMETHERS
IN SUPPORT OF APPLICATION**

Dated: August 17, 2020

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Section 63.71 Application of CenturyLink) WC Docket No. ___
Services, Inc. For Authority Pursuant to)
Section 214 of The Communications Act of)
1934, As Amended, to Discontinue The)
Provision of Certain Packet-Based And)
Wavelength Business Services as Common)
Carriage Services and to Instead Offer)
Those Services as Private Carriage Services)

**DECLARATION OF THERESA SMETHERS
IN SUPPORT OF APPLICATION**

I. QUALIFICATIONS AND BACKGROUND

1. My name is Theresa Smethers. I am a Senior Product Manager at CenturyLink. In this position, I manage CenturyLink's Switched Ethernet Services for its wholesale sales channel. I have been employed by CenturyLink and its predecessor companies for 29 years. Prior to my current position, I held product management positions related to CenturyLink's TDM, SONET, and Switched and Dedicated Ethernet services.

II. PURPOSE AND SUMMARY

2. In this declaration, I describe the services covered by CenturyLink's Application and why granting it will benefit competition and consumers. In short, the services subject to the Application are packet-based and wavelength services offered to sophisticated customers, including business, government, and educational institution entities. The marketplace for these services is intensely competitive and includes, among others, cable companies, CLECs, ILECs, resellers, and systems integrators. Virtually every customer opportunity is contested, typically by multiple facilities-based providers. However, CenturyLink's services are subject to different

regulatory requirements than many of its competitors' services, which impedes CenturyLink's ability to respond effectively to competitive offers, thus harming competition and consumers.

3. Specifically, I understand that the Commission has formally acknowledged that many of the packet-based services offered by cable companies, two ILECs, and one CLEC are "private carriage" services.¹ By contrast, CenturyLink's packet-based and wavelength services have historically been considered "common carriage."² This regulatory asymmetry gives cable companies and other entities a significant and entirely arbitrary competitive advantage. Private carriage competitors are permitted to tailor their offerings to the individualized needs of each customer, and CenturyLink's private carriage competitors are increasingly competing in this way. CenturyLink, by contrast, is constrained in its ability to tailor its offers to the individualized needs of customers because CenturyLink's services are treated as common carrier services. Consequently, CenturyLink often cannot respond to its competitors' offers as aggressively as it would like because of its common carrier obligations. In addition, unlike its private carriage competitors, CenturyLink spends time and money evaluating the implications of common carriage requirements when assessing how best to respond to the tailored and individualized offerings of its private carriage competitors. For all these reasons, granting private carriage status for the services included in the Application will enable CenturyLink to compete more effectively against its private carriage rivals.

¹ See CenturyLink Statement in Support of Application, at 9-10 (citing *Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd. 3459, ¶¶ 267-85 (2017) ("BDS Order"), remanded in part, *Citizens Telecomms. Co. of Minn. v. FCC*, 901 F.3d 991 (8th Cir. 2008), mandate stayed (Order, 8th Cir., November 9, 2018)).

² I understand that the regulatory classification of the CenturyLink packet-based and wavelength services at issue here is not absolutely clear because these services have never been formally classified as "common carriage." However, I also understand that regulators and others have historically assumed that CenturyLink's packet-based and wavelength services are subject to "common carriage" regulation. CenturyLink has thus complied with the common carriage requirements for these services.

4. The remainder of this declaration is organized as follows. In Section III, I describe the specific packet-based and wavelength services that CenturyLink is seeking to offer as private carriage, and I identify the corresponding services offered by a number of CenturyLink's competitors.³ In Section IV, I describe the harms to CenturyLink, competition, and consumers caused by the current regulatory asymmetry, and why granting CenturyLink's application will address those harms.

III. THE SERVICES COVERED BY CENTURYLINK'S APPLICATION

5. CenturyLink's Application seeks to formally classify the following packet-based and wavelength business services as private carriage.

A. Switched Ethernet Services

6. Switched Ethernet Services are switched services purchased by business, government, and educational institution customers to connect multiple locations using Ethernet protocol in speeds up to 100 Gbps. These services connect each customer location to an Ethernet switch in a CenturyLink office, and CenturyLink's network manages the routing of traffic to and from the connected locations. Switched Ethernet Services are provisioned over mostly fiber facilities and are available within and outside CenturyLink's ILEC footprint.⁴ CenturyLink offers Switched Ethernet Services to wholesale and retail customers of all sizes. To order Switched Ethernet Services, customers generally must contact a CenturyLink sales representative, or

³ Although I understand that CenturyLink must technically apply to "discontinue" these services to reclassify them as private carriage, CenturyLink does not plan to actually "discontinue" any service. CenturyLink plans to continue offering these services and to honor all existing contracts.

⁴ Within CenturyLink's ILEC service territory these services are called Ethernet Virtual Private Line, Metro Ethernet, and Metro Optical Ethernet. Outside that territory, these services are offered as E-Services (E-Access (EPL, EVPL) and E-Line (EPL, EVPL)), Extended Native Local Area Network, Elite Native Local Area Network, and Virtual Private Network. In this declaration, I collectively refer to these services as "Switched Ethernet Services."

already have a previously negotiated “growth” contract in place for future circuits. Although CenturyLink publishes standard rates, terms, and conditions for some Switched Ethernet Services in its service publications,⁵ most customers negotiate individualized rates and terms that reflect their unique circumstances. CenturyLink’s Switched Ethernet Services compete with numerous analogous services offered by other providers.⁶

B. Dedicated Ethernet Services

7. Dedicated Ethernet Services are used by business, government, and educational institutions to connect multiple locations with dedicated fiber facilities. They are typically used by customers for local or long-distance data transport. They are available within and outside CenturyLink’s ILEC footprint in bandwidths up to 100 Gbps.⁷ To order service, customers generally must contact a CenturyLink sales representative. Although CenturyLink publishes standard rates, terms, and conditions in its interstate service guides for some of these Dedicated Ethernet Services,⁸ most customers negotiate individualized rates and terms. CenturyLink’s Dedicated Ethernet Services compete with numerous analogous services offered by other providers.⁹

⁵ See Exhibit A, hereto (links to the online description of these services).

⁶ See Exhibit B, hereto (listing a sample of the products offered by CenturyLink’s competitors that compete directly with CenturyLink’s Switched Ethernet services).

⁷ Within CenturyLink’s ILEC service territory, these services are called Ethernet Transport, Ethernet over SONET, and Ethernet Private Line. Outside that territory they are offered as Ethernet Private Line, Intercity and Metro E-Line, and E-Line.

⁸ See Exhibit A, hereto (links to the online description of these services).

⁹ See Exhibit B, hereto (listing a sample of the products offered by CenturyLink’s competitors that compete directly with CenturyLink’s Dedicated Ethernet services).

C. Wavelength Services

8. Wavelength Services are dedicated services used by business, government, and educational institutions. They are a fully managed private network solution provided over fiber facilities offering high levels of availability, reliability, and security. They are available in bandwidths up to 100 Gbps.¹⁰ To order service customers generally must contact a CenturyLink sales representative and negotiate customized rates and terms. Wavelength customers typically are larger business or wholesale customers that require CenturyLink's most reliable data networking connectivity. Customers include large banks and financial institutions, retailers, pharmaceutical companies, defense contractors, data center providers, government agencies, and wholesale service providers.¹¹ CenturyLink's Wavelength services compete with numerous analogous services offered by other providers.¹²

IV. GRANTING THE APPLICATION WILL ENABLE CENTURYLINK TO COMPETE MORE EFFECTIVELY, BENEFITING COMPETITION AND CONSUMERS

9. Granting the Application will enable CenturyLink to respond more effectively to competitive offerings, which will further enhance competition for packet-based and wavelength business services.

10. CenturyLink offers all of the services subject to this Application in a highly competitive marketplace, where cable companies are among the fastest growing competitors. Virtually every customer opportunity is contested, typically by multiple facilities-based providers. The FCC recently stated that "competition" for packet-based services is "sufficient

¹⁰ Within CenturyLink's ILEC service territory, these services are called Optical Wavelength and GeoMax. Outside that territory they are offered as Optical Wavelength and Wavelength.

¹¹ See Exhibit A, hereto (link to the online description of these services).

¹² See Exhibit B, hereto (listing a sample of the products offered by CenturyLink's competitors that compete directly with CenturyLink's wavelength services).

enough to discipline pricing.”¹³ And Vertical Systems (an analyst firm that tracks competition among providers for Ethernet services) has found that “[p]rice compression, particularly for high speed services, continues to limit Ethernet revenue growth and that, in 2019, “Comcast had the highest year-over-year market share growth” across the largest Ethernet providers.¹⁴

11. Notwithstanding this highly competitive marketplace, CenturyLink’s services are subject to more regulation than those of most of its competitors. Although the Commission has not formally designated CenturyLink’s packet-based and wavelength services as either “private carriage” or “common carriage,” I understand that the Commission has generally assumed that CenturyLink’s packet-based and wavelength services are “common carriage,” and that is how CenturyLink has treated them. By contrast, the Commission has formally acknowledged that the analogous services offered by larger cable companies and certain other competitors, including AT&T, are “private carriage” services.¹⁵ This regulatory asymmetry allows CenturyLink’s competitors to make offers to customers that CenturyLink cannot match.

12. Specifically, CenturyLink’s private carriage competitors – especially cable companies – are increasingly targeting individual customers or specific groups of customers with offerings that are specifically tailored to their individualized needs. CenturyLink would like to meet or beat many of these competitive offers. However, because CenturyLink treats its

¹³ *BDS Order* ¶ 83.

¹⁴ 2019 U.S. Carrier Ethernet Leaderboard, Vertical Systems (Feb. 2020), <https://www.verticalsystems.com/2020/02/20/2019-us-ethernet-leaderboard/>.

¹⁵ *See, e.g., BDS Order*, ¶¶ 267-285 (formally classifying packet-based business services offered by cable companies and certain ILECs and CLECs as private carriage services); *Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecommunications Services Provided on a Common Carriage Basis and Reclassify Those Services as Private Carriage Services*, WC Docket No. 19-323, Public Notice, DA 19-1216, 34 FCC Rcd 11069 (Nov. 27, 2019) (noting that AT&T’s application would be deemed granted automatically on December 28, 2019 unless the Commission notified AT&T that its grant would not be automatically effective).

packet-based and wavelength services as “common carriage,” I understand that CenturyLink often lacks the regulatory flexibility to do so in the same manner.

13. For example, cable companies have been successful in winning small business customers from CenturyLink by offering promotions that are tailored to each customer’s (or group of customers’) individualized needs. CenturyLink would like to respond to these competitive offers. However, as a “common carrier” of these services, CenturyLink is somewhat constrained in its ability to make similarly tailored offers. Thus, although CenturyLink often could meet or beat its rivals’ offers for packet-based and wavelength services, its common carrier obligations sometimes prevent it from doing so. The issue is not limited to pricing, but rather sometimes includes one-off terms and conditions.

14. The artificial and arbitrary differences in the regulatory classifications for CenturyLink’s packet-based and wavelength services and its competitors’ analogous services can limit CenturyLink’s ability to respond to competitive offerings, causing CenturyLink to lose customers and reducing CenturyLink’s competitive impact in the marketplace.

15. It is also important to note that CenturyLink, as a common carrier, incurs additional burdens that are not borne by its private carriage competitors. When CenturyLink considers its response to a competitor’s individualized offer, CenturyLink must expend substantial time and resources evaluating the extent to which its response must be curtailed due to its common carriage obligations. This additional cost places CenturyLink at a further disadvantage relative to its private carriage competitors, and this additional time makes CenturyLink a less nimble competitor.

V. CONCLUSION

16. For all the reasons set forth above, granting CenturyLink's Application will benefit competition and consumers.

VERIFICATION

I hereby swear under penalty of perjury that, based on the best information available to me, the foregoing is true and correct.

/s/ Theresa Smethers

Theresa Smethers

Dated: August 17, 2020

EXHIBIT A

**DESCRIPTIONS OF PACKET-BASED AND
WAVELENGTH SERVICES SUBJECT TO APPLICATION**

Services	CenturyLink Entity Providing	Representative Website Reference
Switched Ethernet	<p>CTL ILEC Affiliates</p> <p>CTL CLEC Affiliates</p>	<p>Ethernet Virtual Private Line (ISG No. 1, § 7.12) https://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_1.pdf</p> <p>Metro Ethernet https://www.centurylink.com/business/networking/ethernet.html</p> <p>Metro Optical Ethernet (ISG No. 11, § 8.8) https://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_11_part2.pdf</p> <p>E-Services: E-Access (EPL, EVPL), E-Line (EPL, EVPL) https://www.centurylink.com/asset/wholesale/site/data-sheet/wholesale-ethernet-data-sheet.pdf https://www.centurylink.com/business/networking/ethernet.html#e-line</p> <p>Extended Native Local Area Network* Elite Native Local Area Network* Enterprise Switched Native Local Area Network*</p> <p>Virtual Private Network https://www.centurylink.com/business/networking/mpls-ipvpn.html</p>
Dedicated Ethernet	CTL ILEC Affiliates	<p>Ethernet Transport (ISG No. 1, § 7.11) https://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_1.pdf</p> <p>Ethernet over SONET (ISG No. 11, § 7.19.2) https://www.centurylink.com/tariffs/fcc_cloc_acc_isg_no_11_part1.pdf</p>

	CTL CLEC Affiliates	<p>Ethernet Private Line https://www.centurylink.com/wholesale/site/networking/ethernet.html https://www.centurylink.com/tariffs/fcc clc ixc rss no 10.pdf (ISG No. 10, § 7.E.5)</p> <p>Intercity and Metro E-Line https://www.centurylink.com/wholesale/site/networking/ethernet.html https://www.centurylink.com/asset/business/enterprise/solution-brief/en-ethernet-fs-ethernetmatrix-ss180015.pdf</p> <p>E-Line (ISG No. 10, § 7.E.4) https://www.centurylink.com/tariffs/fcc clc ixc rss no 10.pdf</p>
Wavelength	<p>CTL ILEC Affiliates</p> <p>CTL CLEC Affiliates</p>	<p>Optical Wavelength (ISG No. 11, § 7.20) http://www.centurylink.com/tariffs/fcc cloc acc isg no 11 part1.pdf</p> <p>Geomax (ISG No. 11, § 7.18) http://www.centurylink.com/tariffs/fcc cloc acc isg no 11 part1.pdf</p> <p>Wavelength https://www.centurylink.com/wholesale/site/networking/wavelength.html</p> <p>Optical Wavelength https://www.centurylink.com/wholesale/site/networking/wavelength.html</p>

* CenturyLink no longer proactively sells these services

**SAMPLE OF SERVICES OFFERED BY OTHER PROVIDERS
THAT COMPETE DIRECTLY AGAINST THE CENTURYLINK SERVICES SUBJECT TO THE APPLICATION**

CenturyLink	AT&T	Verizon	Comcast	Cox	Charter	Windstream	XO
Switched Ethernet Services	ASE	Switched E-LAN, Switched E-Line	Ethernet Network Svc., Metro Ethernet, EVPL	E-LAN (MP2MP), EVPL (Hub-Spoke)	EPLAN, VPL	Switched Ethernet	Ethernet Hub Service, Ethernet VPLS
Dedicated Ethernet Services	ADE	Dedicated E-Line	EPL	Dedicated EPL (ICB only)	Wavelength Services	Wave Service	Ethernet Private Line
Wavelength Services	EPLS-WAN, VPN	Dedicated E-Line, Wavelength Services	EPL	Dedicated EPL (ICB only)	Wavelength Services	Wave Service	Wavelength