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# [***United States v. CenturyLink, Inc.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5S2Y-KR61-F4NT-X1P2-00000-00&context=)

United States District Court for the District of Columbia

March 6, 2018, Filed

Case No. 1:17-cv-02028

**Reporter**

2018 U.S. Dist. LEXIS 61408 \*; 2018-1 Trade Cas. (CCH) P80,299

UNITED STATES OF AMERICA, Plaintiff, v. CENTURYLINK, INC. and LEVEL 3 COMMUNICATIONS, INC., Defendants.

**Core Terms**

Divestiture, fiber, Acquirer, final judgment, customers, Dark, Intercity, connections, telecommunications service, network, services, competitive, Routes, calendar days, accomplished, provider, locations, public interest, sole discretion, metropolitan area, ***antitrust***, divest, appointment, strands, documents, decree, telecommunications, acquisition, provisions, Trustee's

**Headnotes/Syllabus**

**Headnotes**

[***Clayton Act***](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GNX1-NRF4-43GX-00000-00&context=)

**Acquisitions and Mergers—Consent Decrees—Divestitures—Telecommunications—A** Department of Justice settlement allowing telecommunications provider CenturyLink. Inc. to acquire Level 3 Communications. Inc., one of the largest competitive exchange carriers in the United States, subject to the divestiture of Level 3's telecommunications networks in Albuquerque. Boise, and Tucson, was approved by the federal district court in Washington. D.C. The consent decree also required the combined company to authorize the sale of dark fiber, fiber-optic cable with no electronics attached to it, along 30 intercity routes across the United States. The consent decree resolved Department of Justice ***Antitrust*** Division concerns that without the relief, the combination would have reduced competition for fiber-optic-based telecommunications services in Albuquerque. Boise, and Tucson, as well as competition for the sale of dark fiber along the 30 intercity routes.

**See ¶4325, ¶ 4365**.

**Counsel:** **[\*1]**For plaintiff: Scott L Reiter, U.S. Department of Justice, for the United States.

For defendants: Ilene Knable Gotts (Wachtell, Lipton, Rosen & Katz) for CenturyLink, Inc. John Bruce McDonald (Jones Day) for Level 3 Communications. Inc.

**Judges:** JACKSON, D.J.

**Opinion by:** JACKSON

**Opinion**

**FINAL JUDGMENT**

Jackson, D.J.: WHEREAS, Plaintiff, United States of America, filed its Complaint on October 2, 2017, the United States and defendants, CenturyLink, Inc. and Level 3 Communications. Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any Issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS,**[\*2]** defendants have represented to the United States that the divestitures required-below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

**I. JURISDICTION**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under [*Section 7 of the Clayton Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GNT1-NRF4-426N-00000-00&context=), as amended ([*15 U.S.C. § 18*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GNT1-NRF4-426N-00000-00&context=)).

**II. DEFINITIONS**

As used in this Final Judgment:

A. "*Acquirer*" or "*Acquirers*" means the entity or entities to whom defendants divest the Divestiture Assets.

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

C. "*Level 3*" means defendant Level 3 Communications, Inc., a Delaware corporation**[\*3]** with its headquarters in Broomfield, Colorado, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

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

E. "*Dark Fiber*" means fiber optic strands provided without electronic or optronic equipment.

F. "*Divestiture Assets*" means the MSA Divestiture Assets and the Intercity Dark Fiber Assets.

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

H. "*Gateway location*," means a facility in or near an MSA where intercity fiber terminates and connects with a Metropolitan Area Network and/or other intercity fiber.

1. "*Intercity Dark Fiber Assets*" means IRUs for 24 strands of Dark Fiber in the same cable, if available, or if not available in the same cable, then in the same duct bank, on the Intercity Routes and any Dark Fiber necessary to connect any Intercity Route with another Intercity Route that**[\*4]** terminates at a different Gateway Location in the same MSA The term "Intercity Dark Fiber Assets" shall be construed as broadly as necessary to accomplish the purposes of this Final Judgment and any IRU shall provide the following:

(1) A term of twenty-five (25) years, with two options to extend for two (2) additional five (5) year terms (for a total of ten (10) years), exercisable at the Acquirer's sole discretion at any time during the initial 25-year term so long as written notice is provided to the defendants at least ninety (90) days prior to the expiration of the IRU term, and, for each five-year renewal term, at a price not to exceed 20% of the fee initially paid by the Acquirer for the Intercity Dark Fiber Assets;

(2) Subject to the approval of the United States, in its sole discretion, customary terms and conditions, including terms regarding respective operations and maintenance rights and obligations; fiber quality, testing, and technical performance; access; and cooperation:

(3) The right to assign the IRU, in whole or in part, without the consent of defendants; and

(4) All additional rights defendants have that are necessary (including, as needed, rights to access and occupy**[\*5]** space in defendants' facilities) to enable the Acquirer or its assignee to provide telecommunications services using the Intercity Dark Fiber Assets.

J. "*Intercity Routes*" means Dark Fiber connecting the end points specified in Appendix B.

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

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

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

N. "*Metropolitan Area Network*" means fiber optic strands that are used to connect Lateral Connections to one another and to Gateway Locations and any existing related duct,**[\*6]** conduit or other containing or support structure.

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

P. "*MSA Customers*" means customers who purchase telecommunications services from Level 3 at a location within any of the Divestiture MSAs, but shall not include the customers listed in Appendix A.

Q. "*MSA Divestiture Assets*" means all Level 3 assets, tangible and intangible, used exclusively or primarily to support Level 3's provision of telecommunications services to customer locations in the Divestiture MSAs, including, but not limited to. Lateral Connections, Metropolitan Area Network; ownership and access rights to all ducts, conduit and other containing or support structure used by Level 3 to Operate or augment such Lateral Connections and Metropolitan Area Network; and all switching, routing, amplification, co-location, or other telecommunications equipment used in or associated with those networks in each Divestiture MSA, up to Level 3's Gateway Location(s) in each Divestiture MSA. The MSA Divestiture Assets shall also include other assets used by Level 3 for its provision of telecommunications services to customer locations in each**[\*7]** Divestiture MSA including, but not limited to, all licenses, permits and authorizations related to the MSA Divestiture Assets issued by any governmental organization to the extent that such licenses, permits and authorizations are transferable and such transfer would not prevent Level 3 from providing telecommunications services in the three Divestiture MSAs; all contracts (except as otherwise excluded by the terms of this Final Judgment), teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all MSA Customer lists (including the name of each MSA Customer and each Majority MSA Customer the address of each MSA Customer location within the Divestiture MSAs, and the address of each Majority MSA Customer location within the Divestiture MSAs and outside the Divestiture MSAs); all repair and performance records relating to the MSA Divestiture Assets; and all other records relating to the MSA Divestiture Assets reasonably required to permit the Acquirer to conduct a thorough due diligence review of and to operate the MSA Divestiture Assets. The MSA Divestiture Assets shall not include assets, wherever located, used exclusively**[\*8]** or primarily in or in support of Level 3's provision of telecommunications services outside the Divestiture MSAs. including the provision of telecommunications services between MSAs.

The term "MSA Divestiture Assets" shall be construed as broadly as necessary to accomplish the purposes of this Final Judgment and is subject to the following:

(1) The MSA Divestiture Assets shall not include Customer Premises Equipment in a location in a Divesture MSA currently owned by Level 3 unless and until the customer chooses the Acquirer as its supplier pursuant to Section IV(K) for that location; and

(2) Level 3's contracts to provide telecommunications services to customers are not included as MSA Divestiture Assets, but are subject to the process specified in Sections IV(K) and IV(L) of this Final Judgment.

**III. APPLICABILITY**

A. This Final Judgment applies to CenturyLink and Level 3, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV, Section V, and Section VI of this Final Judgment, defendants sell or otherwise dispose of all or substantially**[\*9]** all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

**IV. DIVESTITURE OF MSA DIVESTITURE ASSETS**

A. Defendants are ordered and directed, within 120 calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the MSA Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers in each Divestiture MSA and on terms acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If approval or consent from any government unit is necessary with respect to divestiture of the MSA Divestiture Assets by defendants or the Divestiture Trustee and it applications or requests for approval or consent have been filed with the**[\*10]** appropriate governmental unit within five (5) calendar days after the United States provides written notice pursuant to Section VII(E) that it does not object to the proposed Acquirer, but an order or other dispositive action on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those MSA Divestiture Assets for which governmental approval or consent has not been issued until five (5) calendar days after such approval or consent is received. Defendants agree to use their best efforts to divest the MSA Divestiture Assets and to seek all necessary ***regulatory*** or other approvals or consents necessary for such divestitures as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment defendants promptly shall make known, by usual and customary means, the availability of the entire MSA Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the MSA Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment Defendants shall offer**[\*11]** to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the MSA Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. With respect to each Divestiture MSA, defendants shall provide the Acquirer of MSA Divestiture Assets and the United States information relating to the personnel whose primary responsibilities relate to the operation of any MSA Divestiture Asset to enable the Acquirer to make offers of employment Defendants will not interfere with any negotiations by the Acquirer to employ such personnel.

D. Defendants shall permit prospective Acquirers of the MSA Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the MSA Divestiture Assets; access to any and all environmental, zoning, title, right-of-way, and other permit documents and information; and access to any and all financial.,**[\*12]** operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to any Acquirer(s) that the MSA Divestiture Assets will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the MSA Divestiture Assets.

G. Subject to approval by the United States, defendants may enter into a negotiated contract with each Acquirer of MSA Divestiture Assets for a period of two (2) years from the closing date of the divestiture of the MSA Divestiture Assets, under which the Acquirer would provide to defendants all Lateral Connections and associated Metropolitan Area Network needed to support Level 3 customers in the applicable Divestiture MSA that choose to remain customers of defendants.

H. At the option of the Acquirer(s), defendants shall, enter into a Transition Services Agreement for any, services that are reasonably necessary for the Acquirer(s) to maintain, operate, provision, monitor, or otherwise support the MSA Divestiture Assets, including any required back office and information technology services, for a period of up to twelve (12)**[\*13]** months. The United States, In its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. Defendants shall perform all duties and provide all services required of defendants under the Transition Services Agreement. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions. Any amendments, modifications or extensions of the Transition Services Agreement maybe entered into only with the approval of the United States, in its sole discretion.

I. Defendants shall use their best efforts to obtain from any third parties that provide Level 3, on a leased or IRU basis, Lateral Connections and Metropolitan Area Network in the Divestiture MSAs any consent necessary to transfer, assign, or sublease to the Acquirer the contract(s) for such Lateral Connections or Metropolitan Area Network to the extent related to the MSA Divestiture Assets and will effectuate the transfer, assignment or sublease of such contract(s) to the Acquirer. The Acquirer and defendants may enter into a commercial services agreement to replace the service provided by any level 3**[\*14]** Lateral Connections and Metropolitan Area Network in the Divestiture MSAs currently provided to Level 3 on a leased or IRU basis (1) if, because of withheld consent, the parties are unable to transfer, assign, or sublease to the Acquirer any contract(s) for such Lateral Connections or Metropolitan Area Network in the Divestiture MSAs currently provided to Level 3 on a leased or IRC basis; or (2) at the option of the Acquirer and subject to approval by the United States, in its sole discretion. Defendants shall use their best efforts to obtain from any third parties that provide Level 3 rights of way, access rights, or any other rights to operate, expand, or extend Lateral Connections or Metropolitan Area Network in the Divestiture MSAs any consent necessary to transfer such rights to the Acquirer(s).

J. Defendants shall warrant to the Acquirer(s) that they are not aware of any material defects in the environmental, zoning, title, right-of-way, or other permits pertaining to the operation of each asset, and that following the sale of the MSA Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, title, right-of-way, or**[\*15]** other permits relating to the operation of the MSA Divestiture Assets.

K. For each Divestiture MSA, beginning on the closing date of the sale of the MSA Divestiture Assets and continuing for a period of the lesser of two (2) years from the closing date of the sale or the expiration of an MSA Customer's contract provided the expiration is at least thirty (30) days after the closing date of the sale, defendants shall

(1) release the MSA Customers from their contractual obligations for any otherwise applicable termination fees for telecommunications services provided by Level 3 at locations within the applicable Divestiture MSA, in order to enable any. MSA Customers, without penalty or delay, to elect to use the Acquirer for provision of such-telecommunications services, and

(2) for any Majority MSA Customers, defendants shaft release such customers from their contractual obligations for all Level 3 services for any otherwise applicable termination fees charged by defendants, at all locations serviced by Level 3, even if located outside the applicable Divestiture MSA, provided that defendants and Acquirer shall each be required to pay half of any third-party fees associated with the termination**[\*16]** of delivery of telecommunications services to each Majority MSA Customer at each terminated location outside the Divestiture MSAs, in order to enable these customers, without penally imposed by defendants or delay, to elect to use the Acquirer for the provision of such telecommunications services.

L. For a period of two (2) years following the entry of this Final Judgment, defendants shall not initiate customer-specific communications to solicit any MSA Customer or Majority MSA Customer to provide any telecommunications services to locations for which such customers have elected to use an Acquirer as its provider of telecommunications services pursuant to the process specified in Section IV(K) of this Final Judgment; provided however, that defendants may (1) respond to inquiries and enter into negotiations to provide service at these locations or other locations at the request of the customer and (2) except for any location at which the MSA Customer has elected to use an Acquirer as its provider of telecommunications services pursuant to the process specified in Section IV(K), continue to solicit business opportunities from any MSA Customer that was prior to the entry of this Final**[\*17]** Judgment a customer of CenturyLink in the Divestiture MSA.

M. Within fifteen (15) business days of the date of the sale of any MSA Divestiture Assets to an Acquirer, defendants shall communicate, in a form approved by the United States in its sole discretion, to all MSA Customers notifying the recipients of the divestiture and providing a copy of this Final Judgment. Defendants shall provide the United States a copy of this notification at least ten (10) business days before it is sent. The notification shall specifically advise customers of the rights provided under Sections IV(K) and IV(L) of this Final Judgment The Acquirer shall have the option to include its own notification along with defendants' notification.

N. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section VI, of this Final Judgment, shall include the entire MSA Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the MSA Divestiture Assets can and will be used by the Acquirer or Acquirers as part of a viable, ongoing business providing telecommunications**[\*18]** services. Divestiture of the MSA Divestiture Assets may be made to one or more Acquirers, provided that (i) all MSA Divestiture Assets in a given Divestiture MSA are divested to a single Acquirer unless otherwise approved by the United States, in its sole discretion, and (ii) in each instance it is demonstrated to the sole satisfaction of the United States that the MSA Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section VI of this Final Judgment,

(1) shall be made to an Acquirer (or Acquirers) that in the United States sole judgment has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of telecommunications services; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of**[\*19]** the Acquirer to compete effectively.

**V. DIVESTITURE OF INTERCITY DARK FIBER ASSETS**

A. Defendants are ordered and directed, within 120 calendar days after the dosing of CenturyLink's acquisition of Level 3, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Intercity Dark Fiber Assets in a manner consistent with this Final Judgment to an Acquirer and on terms acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. If approval or consent from any government unit is necessary with respect to the sale of the Intercity Dark Fiber Assets by defendants or the Divestiture Trustee and if applications or requests for approval or consent have been filed with the appropriate governmental unit within five (5) calendar days after the United States provides written notice pursuant to Section VII(E) that it does not object to the proposed Acquirer, but an order or other dispositive action on such applications has not been issued before**[\*20]** the end of the period permitted for divestiture, the period shall he extended with respect to divestiture of those Intercity Dark Fiber Assets for which governmental approval or consent has not been issued until five (5) calendar days after such approval or consent is received. Defendants agree to use their best efforts to divest the Intercity Dark Fiber Assets and to seek all necessary ***regulatory*** or other approvals or consents necessary for such divestitures as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Section, defendants promptly shall make known, by usual and customary means, the availability of the Intercity Dark Fiber Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Intercity Dark Fiber Assets that they are being sold pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Intercity Dark Fiber Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client**[\*21]** privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall permit prospective Acquirers of the Intercity Dark Fiber Assets to have reasonable access to personnel and to such other documents and information customarily provided as part of an IRU transaction, including but not limited to fiber type and performance specifications; date of fiber installation; fiber repair history; fiber maps; route miles; gateway, interconnection, amplification, and regeneration locations; and right-of-way type, owner, and expiration.

D. Defendants shall warrant to the Acquirer that the Intercity Dark Fiber Assets will be available; provided, however, that the Intercity Dark Fiber Assets may be sold prior to the completion date for additional construction that is required to connect the Dallas to Memphis Dark Fibers to the Memphis Gateway location specified in Appendix B so long as the defendants have taken all appropriate actions to obtain such permits and approvals and to complete the construction of the connection expeditiously thereafter. The Defendants will**[\*22]** warrant to the Acquirer that the Acquirer or other end user of the Dark Fiber will be able to light each Dark Fiber pair on the Intercity Routes using one set of electronic or optronic equipment.

E. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Intercity Dark Fiber Assets.

F. Defendants shall warrant to the Acquirer that there are currently no material defects in the environmental, zoning, title, right-of-way, or other permits pertaining to the operation of the Intercity Dark Fiber Assets, and that following the sale of the Intercity Dark Fiber Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental zoning, title, right-of-way, or other permits relating to the operation of the Intercity Dark Fiber Assets.

G. Unless the United States otherwise consents in writing, the sale pursuant to Section V, or by Divestiture Trustee appointed pursuant to Section VI, of this Final Judgment, shall include the entire Intercity Dark Fiber Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Intercity Dark Fiber Assets can and will be**[\*23]** used by the Acquirer as part of a viable, ongoing telecommunications services business including the sale of Dark Fiber IRUs to end users. Divestiture of the Intercity Dark Fiber Assets must be made to a single Acquirer unless otherwise approved by the United States, in its sole discretion. The sale, whether pursuant to Section V or Section VI of this Final Judgment, otherwise to interfere in the ability of the Acquirer to compete effectively.

(1) shall be made to an Acquirer that, in the United States sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the sale of Dark Fiber IRUs to end users; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or

**VI. APPOINTMENT OF DIVESTITURE TRUSTEE**

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A) and Section V(A), defendants shall notify the United States of that fact**[\*24]** in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, VI, and VII of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section VI(D) of this Final Judgment. the Divestiture Trustee may hire at the cost and expense of defendants any investment bankers, attorneys, technical experts or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such Investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States**[\*25]** approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII.

D. The Divestiture Trustee shall serve at the cost and expense of defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and**[\*26]** agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar' days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures, including their best efforts to effect all necessary ***regulatory*** or other approvals or consents and will provide necessary representations or warranties as appropriate,**[\*27]** related to the sale of the Divestiture Assets. The Divestiture Trustee and any consultants, accountants, attorneys, technical experts, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets, and defendants shall develop financial and other information relevant to the Divestiture Assets as the Divestiture Trustee may reasonably re quest, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges, Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number**[\*28]** of each person who, during the preceding month, made an offer to acquire; expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestitures ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contains information that the Divestiture Trustee deems confidential, such re ports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent**[\*29]** with the purpose of the trust The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or tailed to act diligently or in a reasonably cost-effective mariner, it may recommend the Court appoint a substitute Divestiture Trustee.

**VII. NOTICE OF PROPOSED DIVESTITURE**

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offend or expressed an interest in or desire to acquire any ownership interest**[\*30]** in the Divestiture Assets. together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), any other potential Acquirer, including, but not limited to, the contract (or contracts) required by Section IV(F) of this Final Judgment. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the United States shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one required divestitures, including stating whether or not it objects to the proposed divestiture.**[\*31]** If the United States provides written notice that it does not object the divestiture may be consummated, subject only to defendants limited right to object to the sale under Section VI (C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated, Upon-objection by defendants under Section VI(C), a divestiture proposed under Section VI shall not be consummated unless approved by the Court.

**VIII. FINANCING**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV, Section V, or Section VI of this Final Judgment.

**IX. ASSET PRESERVATION**

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court

**X. AFFIDAVITS**

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture**[\*32]** has been completed under Section IV, Section V, or Section VI, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV, Section V, or Section VI of this Final Judgment. Each such affidavit shall Include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of the receipt of such affidavit

B. Within twenty (20) calendar**[\*33]** days of the filing of the Complaint in this matter, defendants shall deliver us the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment, Defendants shall 'deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed:

**XI. COMPLIANCE INSPECTION**

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege; from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon-written request of**[\*34]** an authorized representative of the Assistant Attorney General in charge of the ***Antitrust*** Division, and on reasonable notice to defendants, be permitted:

(1) access during defendants' office hours to in: spect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the re-cord, defendants' officers.

(3) employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the ***Antitrust*** Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section**[\*35]** shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under *Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure*, and defendants mark each pertinent page of such material, "Subject to claim of protection under *Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure*," then the United States shall give defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than grand jury proceedings).

**XII. NO REACQUISITION**

Except as provided in this Final Judgment, absent written approval by the United States, in its sole discretion, defendants may not reacquire or lease back any part of the Divestiture Assets during the term of this Final Judgment

**XIII. RETENTION OF JURISDICTION**

This Court retains jurisdiction to enable any party to**[\*36]** this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIV. EXPIRATION OF FINAL JUDGMENT**

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

**XV. PUBLIC INTEREST DETERMINATION**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the [***Antitrust*** *Procedures and Penalties Act, 15 U.S.C. § 16*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=), including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court entry of this Final Judgment is in the public interest.

Court approval subject to procedures of ***Antitrust*** Procedures and Penalties Act, [*15 U.S.C. § 16*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=)

**APPENDIX A**

The following customers serviced in the Divestiture MSAs, identified for confidentiality purposes by Level 3's customer identification**[\*37]** code, are excluded from the definition of MSA Customers and are not subject to the procedures outlined in Section IV(K) and (L) of this Final Judgment:

1. 1-8UM5C. Tucson, AZ

2. 2-LOTDXB, Albuquerque, NM

3. 2-79C52T, Boise, ID 83716

4. 1-5JXJ4, Albuquerque, NM

5. 2-TRJJST, Boise, ID

APPENDIX B

[*Go to table1*](#Table1)



[COMPETITIVE IMPACT STATEMENT][[1]](#footnote-0)\*

Plaintiff United States of America, pursuant to [*Section 2(b) of the* ***Antitrust*** *Procedures and Penalties Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=) ("APPA" or "Tunney Act"), [*15 U.S.C. § 16(b)-(h)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=), files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this civil ***antitrust*** proceeding.

**I. NATURE AND PURPOSE OF THE PROCEEDING**

Defendant CenturyLink, Inc. and defendant Level 3 Communications, Inc. entered into an agreement, dated October 31, 2016, pursuant to which CenturyLink would acquire Level 3. The United**[\*40]** States filed a civil ***antitrust*** Complaint on October 2, 2017, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be a substantial lessening of competition in the markets for (1) the provision of fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Albuquerque, New Mexico; Boise, Idaho[[2]](#footnote-1)1; and Tucson, Arizona Metropolitan Statistical Areas[[3]](#footnote-2)2 (the "Divestiture MSAs"), and (2) the sale of dark fiber connecting the endpoints specified in Appendix B of the proposed Final Judgment (the "Intercity Routes"), all in violation of [*Section 7 of the Clayton Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GNT1-NRF4-426N-00000-00&context=), [*15 U.S.C. § 18*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GNT1-NRF4-426N-00000-00&context=), As a result of this toss of competition, prices for fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Divestiture MSAs would likely increase and quality of service would likely decrease, and prices for dark fiber on the Intercity Routes would likely increase and availability would likely decrease.

At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order and a proposed Final Judgment, which are**[\*41]** designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment which is explained more fully below, defendants are required: (1) to divest to an acquirer (or acquirers) all the assets used by Level 3 exclusively or primarily to support provision of telecommunications services to enterprise and wholesale customer locations in Albuquerque, Boise, and Tucson (the "MSA Divestiture Assets"), and (2) to enter into indefeasible right of use ("IRU") agreements with an acquirer for twenty-four strands of dark fiber on the Intercity Routes as well as dark fiber necessary to connect those strands with certain other routes (the "Intercity Dark Fiber Assets").

Under the terms of the Asset Preservation Stipulation and Order, defendants will take steps to ensure that the MSA Divestiture Assets are operated as ongoing, economically viable competitive assets and remain uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture. Subject to the approval of the United States, defendants shall appoint a person or persons to oversee the MSA Divestiture Assets. This person shall have complete,**[\*42]** independent managerial responsibility for the MSA Divestiture Assets. Defendants will also preserve, maintain and take all actions necessary to be able to effectuate the sale of the Intercity Dark Fiber Assets.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the AFPA Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

**II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION**

**A. The Defendants and the Proposed Transaction**

Defendant CenturyLink is a Louisiana corporation headquartered in Monroe, Louisiana. It is the third-largest wireline telecommunications company in the United States and the incumbent Local Exchange Carrier ("ILEC")[[4]](#footnote-3)3 in portions of 37 states. CenturyLink also has one of the most extensive physical fiber networks in the United States, including considerable intercity fiber infrastructure. As of December 31, 2016, CenturyLink owned and operated a 360,000 route-mile global network, including a 265,000-route-mile U.S. fiber**[\*43]** network, and generated 2016 operating revenues of $17.47 billion.

Defendant Level 3 is a Delaware corporation headquartered in Broomfield, Colorado. It is one of the largest wireline telecommunications companies in the United States and owns significant local network assets, comprised of metropolitan area network components and direct fiber connections to numerous commercial buildings throughout the United States, including within portions of Century Link's ILEC territory. Level 3 also operates one of the most extensive physical fiber networks in the United States, including sizeable intercity fiber infrastructure. Level 3 owns and operates 200,000 route-miles of global fiber and generated $8.17 billion of operating revenue in 2016.

On October 31, 2016, CenturyLink and Level 3 entered into an Agreement and Plan of Merger whereby CenturyLink will acquire Level 3 for approximately $34 billion.

**B. Anticompetitive Effects of the Proposed Transaction**

Wireline telecommunications infrastructure is critical in transporting the data that individuals, businesses, and other entities transmit. Among the key components of this infrastructure are: the fiber strands connecting an individual building**[\*44]** to a metropolitan area network (often referred to as the last-mile connection); the fiber strands and related equipment comprising a metropolitan area network that serve an entire city or MSA and the intercity fiber strands connecting cities to one another.

**1) Fiber-Based Enterprise and Wholesale Telecommunications Services Providing Local Connectivity to Customer Premises in the Divestiture MSAs**

Enterprise and wholesale customers[[5]](#footnote-4)4 of all sizes rely on last-mile connections to link their premises to a larger metropolitan area network and to all points beyond. In the Divestiture MSAs, defendants have two of the three largest fiber-based metropolitan area networks and own among the largest number of last-mile connections of any telecommunications providers.

CenturyLink has the largest number of last-mile connections in each of the Divestiture MSAs, serving the majority of buildings that require high-bandwidth, high-reliability telecommunications services. In each of the Divestiture MSAs, CenturyLink owns fiber connections to more than a thousand buildings. Level 3 has fiber connections to several hundred buildings in each of the Divestiture MSAs. making it one of the three largest fiber-based**[\*45]** networks in each of the Divestiture MSAs. In many buildings in the Divestiture MSAs, CenturyLink and Level 3 control the only last-mile fiber connections and are the only available choices for customers in those buildings. In other buildings in the Divestiture MSAs, CenturyLink and Level 3 are two of only three significant providers, making them two of only three available choices. And even where CenturyLink and Level 3 do not presently have fiber connections, they, still may be the best alternative for a substantial number of buildings because they are the only two providers with metropolitan area network fiber located close enough to connect economically.

Some customers within the Divestiture MSAs have multiple locations throughout, an individual MSA These multi-location customers often prefer to buy telecommunications services for all of their locations within the MSA from a single provider. Defendants Centurylink and Level 3, both have an extensive fiber footprint in each of the Divestiture MSAs. As a result, CenturyLink and level 3 are often each other's closest competitors for these multi-location customers.

Currently, CenturyLink and Level 3 compete head-to-head to provide these**[\*46]** last-mile fiber-based telecommunications services to single and multi-location customers in the Divestiture MSAs. Customers benefit from this competition through lower prices and higher quality service. CenturyLink's acquisition of Level 3 likely would result in a loss of this competition, leading to increased prices and decreased service quality for such last-mile connections.

**2) Intercity Dark Fiber**

Centurylink and Level 3 both own substantial networks of fiber-optic cable connecting cities throughout the United States. By placing electronic equipment on either end of the fiber, fiber owners can "light" the fiber and use it to transmit large volumes of data between cities. Fiber owners who light the cable can then charge customers to transport data over the fiber (a product called lit services). Customers who purchase lit services typically buy a certain amount of data capacity between two specified endpoints, pay on a monthly basis, and rely on the fiber provider to manage their data traffic.

Fiber owners can also sell dark fiber, where customers purchase rights to the underlying fibers, provide their own electronic equipment to light the fiber, and manage their own networks. Dark**[\*47]** fiber is generally sold through IRUs — a type of long-term lease — which allow the customer to arrange for its own equipment to be placed on the fiber, but permits the grantor to retain responsibility for maintaining the fiber and dealing with outages or cuts. Customers who buy intercity dark fiber using IRUs, such as webscale companies[[6]](#footnote-5)5 and financial institutions, require dark fiber's scalability, capacity, flexibility, and security.

CenturyLink and Level 3 are two of only a handful of companies with robust nationwide intercity fiber networks, and two of only a few companies in the United States that sell intercity dark fiber. On many of the Intercity Routes, Centurylink and Level 3 are the only two, or two of only three, providers who sell intercity dark fiber. In addition, customers typically require dark fiber across multiple routes and prefer dark fiber providers who can provide them with contiguous routes, including those spanning from coast to coast Centurylink and Level 3 are two of only three intercity dark fiber providers with at least one contiguous route connecting the West Coast to the East Coast

Competition between Centurylink and Level 3 has led to lower prices for and**[\*48]** increased availability of intercity dark fiber. This acquisition will eliminate that competition, likely resulting in increased prices and decreased availability.

**III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT**

The divestitures required by the proposed Final Judgment will eliminate the anticipated anticompetitive effects of the acquisition in the markets for (1) the provision of fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Divestiture MSAs, and (2) the sale of dark fiber on the Intercity Routes, by establishing independent and economically viable competitors in each of these markets. The proposed Final Judgment requires defendants, within 120 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to:

(1) divest the MSA Divestiture Assets to a single acquirer in each Divestiture MSA (while each MSA network may not have more than one acquirer, each of the MSAs may have a different acquirer), on terms acceptable to the United States, and;

(2) sell the Intercity Dark Fiber Assets to a single acquirer on terms acceptable to the United States.**[\*49]**

Both the MSA Divestiture Assets and the Intercity Dark Fiber Assets are attractive assets that should draw suitable acquirers with sufficient expertise to accomplish the divestitures expeditiously. Prompt divestitures are important both to minimize customer uncertainty and to maintain the pre-merger competitiveness of the markets in question. Although the United States expects the divestitures to be completed within the 120-day period, in order to preserve flexibility to address unanticipated circumstances the United States may, in its sole discretion, agree to one or more extensions of this time period not to exceed sixty calendar days in total, and shall notify the Court in such circumstances.

The divestitures shall be made to an acquirer (or acquirers) that. In the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the provision of the relevant telecommunications services in the Divestiture MSAs or the sale of intercity dark fiber.

**A. MSA Divestiture Assets**

With regard to the Divestiture MSAs, the United States is requiring the divestiture of Level 3's entire fiber-based**[\*50]** metropolitan area network, including all its last-mile connections. This will encompass all assets, tangible and intangible, used exclusively or primarily to support Level 3's provision of fiber-based telecommunications services to customer locations in the Divestiture MSAs, including, but not limited to, assets such as metropolitan fiber switching and routing equipment, building laterals, ownership interests in and access rights to all conduits, duets and other containing and supporting structures, and repair and performance records.

The MSA Divestiture Assets shall also include other assets used by Level 3 for its provision of telecommunications services to customer locations in each Divestiture MSA, including, but not limited to, all licenses, permits and authorizations related to the MSA Divestiture Assets issued by any governmental organization to the extent that such licenses, permits and authorizations are transferable and such transfer would not prevent Level 3 from providing telecommunications services in the three Divestiture MSAs; all contracts (except as otherwise excluded by the terms of this Final Judgment), teaming arrangements, agreements, leases, commitments, certifications,**[\*51]** and understandings, including supply agreements; customer lists and addresses; all repair and performance records relating to the MSA Divestiture Assets; and all other records relating to the MSA Divestiture Assets reasonably required to permit the Acquirer to conduct a thorough due diligence review of and to operate the MSA Divestiture Assets. The MSA Divestiture Assets shall not include assets, wherever located, used exclusively or primarily in or in support of Level 3's provision of telecommunications services outside the Divestiture MSAs, including the provision of telecommunications services between MSAs.

Based on its investigation of the proposed transaction, the United States believes that the divestiture of the entirety of Level 3's telecommunications networks in each of the Divestiture MSAs will effectively replace the competition that will be lost through this acquisition. Selling the MSA Divestiture Assets as an ongoing competitive business in each Divestiture MSA will provide the acquirer(s) with the ability and incentive to continue to invest in and expand the acquired business, replicating as closely as possible the competitive conditions in each of the Divestiture MSAs**[\*52]** prior to the merger. The particular nature of the competitive problem — including a potential substantial lessening of competition for last-mile services in a large number of commercial buildings throughout each of the Divestiture MSAs — was such that a divestiture of fiber only to certain buildings would be insufficient to remedy the competitive problem and re-create a viable competitor; rather, a divestiture of the network assets throughout each MSA was appropriate in these circumstances.

The United States believes that having the acquirer operate as a completely separate competitive entity as quickly as possible is the most effective competitive outcome and expects that an acquirer with telecommunications experience will be able to do so within one year. 1 However, in order to avoid unnecessary disruptions while the acquirer is setting up its business, at the option of the acquirer(s), defendants arc also required to enter into a Transition Services Agreement for any services that are reasonably necessary for the acquirer(s) to maintain, operate, provision. monitor, or otherwise support the MSA Divestiture Assets, including any required back office and information technology services.**[\*53]** This agreement will last for no more than twelve (12) months, al though the United States may approve one or more extensions for a period of up to an additional twelve (12) months.

In addition, subject to certain conditions, upon closing of the divestiture sale in each of the Divestiture MSAs, defendants, for a period of two years or the expiration of the customer's contract (whichever is shorter), will release Level 3's customers with service locations in that MSA from their contractual obligations for those locations, including otherwise applicable termination fees, to enable the customers to select the acquirer as their telecommunications services provider. Each Level 3 customer who has locations in multiple MSAs will similarly be released from its contracts (including at its locations outside of the Divestiture MSAs) to allow it to switch to the acquirer, if the monthly recurring revenue Level 3 earns from that customer is greater within the Divestiture MSAs than from the aggregate of all locations outside those MSAs. Within fifteen business days of a divestiture in a Divestiture MSA, defendants will notify all MSA customers of the divestiture and of their options under the proposed**[\*54]** Final Judgment. The acquirer will have the option to include its own customer notification with that of the defendants.

In requiring that customers be released from their contracts rather than requiring that customer contracts be divested along with the other assets, the United States is balancing the competitive benefits of the divestiture against the potential imposition of burdens on customers. For example, Level 3 service contracts in the Divestiture MSAs may include a combination of basic connectivity services and other value-added services, such as services-that prioritize routing across a customer's network. The value-added services that an acquirer chooses to offer may differ somewhat from the value-added services offered by Level 3. Thus, divesting customer contracts in specific circumstances would either impose a burden on the customer to accept a different value-added service package than the one they initially bargained for, or would impose a burden on the acquirer to replicate the exact services in Level 3's customer contracts. Requiring that customers be released from their contracts for a defined period of time will, however, allow the acquirer to compete for all customers**[\*55]** in each of the Divestiture MSAs Immediately upon completion of the divestiture.

For a period of two years, defendants are also prohibited from initiating customer-specific communications to solicit any customers who have switched service to the acquirer(s), but can respond to inquiries from the customer or enter into negotiations with the customer at the customer's request. This strikes a balance between enabling an acquirer to establish its business while at the same time generally giving customers at least two meaningful alternatives. The provisions of the proposed Final Judgment allowing customers with locations in the Divestiture MSAs to switch their service to the acquirer(s) free of contractual penalties should, in these circumstances, be sufficient to provide the acquirer(s) with adequate business opportunities and revenue streams while at the same time maximizing customer choice and avoiding customer disruption.

Subject to the United States' approval; defendants may negotiate with each acquirer of MSA Divestiture Assets to lease back from that acquirer for a period of two years all lateral connections and metropolitan area network needed for defendants to support Level 3 customers**[\*56]** that choose to remain customers of defendants, This will allow defendants to continue In provide service without interruption, at least until the defendants have time to transition those customers to its own facilities or make other arrangements.

**B. Intercity Dark Fiber Assets**

Under the proposed Final Judgment, defendants are also required to sell, to a single acquirer, IRUs for twenty-four strands of dark fiber on each of the Intercity Routes. The proposed Final Judgment requires that the Intercity Dark Fiber Assets be divested to a single acquirer because intercity dark fiber customers find it more efficient to deal with one fiber owner than to piece together networks from multiple owners In addition, divesting all the Intercity Dark Fiber Assets to a single acquirer is most likely to result in the creation of a viable, competitive dark fiber provider, thereby replicating the pre-merger competitive market conditions. Twenty-four fiber strands will he sufficient to allow the acquirer to compete with the combined company on the overlap routes.

Defendants are also required to include all the associated rights necessary for the acquirer to resell the dark fiber to end users and to permit**[\*57]** the acquirer, or any of its assignees, to light the fiber and use it to provide telecommunications services. The IRUs will have a term of twenty-five years with two five-year renewal options, giving the acquirer the option to control the fiber for up to thirty-five years.[[7]](#footnote-6)6 The conveyance of intercity dark fiber via a long-term IRU is typical industry practice. This structure ensures that the grantee can use the fiber as it sees fit, but the fiber grantor remains responsible for handling the complexities of ownership, such as maintaining rights-of-way and repairing fiber cuts. The twenty-five year terms is also consistent with the industry practice, as purchasers of intercity dark fiber typically seek IRUs in the range of 10-30 years. If, however, new technologies emerge or the market shifts, the acquirer will have the flexibility to end its lease after 25 years if it no longer sees value in keeping these IRUs.

Defendants are also required to provide a contiguous network of fiber by ensuring that fiber on all of the Intercity Routes sharing an endpoint connect with one another or, where they do not connect, by constructing a connection to link them. Connecting the fibers together into**[\*58]** one network is important because it will provide the acquirer with more attractive inventory, and, importantly, will provide a cross-country route appealing to intercity dark fiber customers that demand a path to carry their data between the dense population areas on the coasts.

The proposed Final Judgment ensures that the Intercity Dark Fiber Assets include all of the rights necessary for the acquirer both to resell the fiber to end users and to allow those end users to be able to light the fiber themselves. Although the Division expects the acquirer to sell some of the Intercity Dark Fiber Assets as dark fiber to end users, the acquirer also may want to sell lit services in conjunction with the dark fiber or use some of the fiber strands to support its own telecommunications infrastructure This is permissible under the proposed Final Judgment; because sellers of dark fiber frequently sell such fiber in conjunction with lit services, the ability to use the Intercity Dark Fiber Assets to provide both lit services and dark fiber should help ensure that the acquirer will be an effective, viable competitor on the Intercity Routes. The acquirer must, however, have the intention and experience**[\*59]** necessary to ensure that the divestiture of the Intercity Dark Fiber Assets will replace competition in the market for intercity dark fiber lost through the acquisition.

\*\*\*\*

In the event that defendants do not accomplish the divestitures within the period prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States, and approved by the Court to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all cases and expenses of the trustee. The trustee's commission will he structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the United States and, as appropriate, the Court setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as it deems appropriate, in order to carry out the purpose**[\*60]** of the Final Judgment, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in all of the markets discussed above.

**IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS**

[*Section 4 of the Clayton Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTP1-NRF4-44B7-00000-00&context=), [*15 U.S.C. 15*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GTP1-NRF4-44B7-00000-00&context=), provides that any person who has been injured as a result of conduct prohibited by the ***antitrust*** laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private ***antitrust*** damage action. Under the provisions of [*Section 5(a) of the Clayton Act*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=), [*15 U.S.C. § 16(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

**V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT**

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not with-drawn its consent The APPA conditions entry upon the Courts**[\*61]** determination that the proposed. Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the *Federal Register*, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, ***Antitrust*** Division's website and, under certain circumstances, published in the *Federal Register*.

Written comments should be submitted to:

Scott A. Scheele

Chief, Telecommunications and Broadband Section

***Antitrust*** Division

United States Department**[\*62]** of Justice.

450 Fifth Street, N.W., Suite 7000

Washington, DC 20530

scott.scheele@usdoj.gov

The proposed Final Judgment provides that the Court retains jurisdiction over this action and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

**VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT**

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against CenturyLink's acquisition of Level 3. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition in the markets for: (1) the provision of fiber-based enterprise and wholesale telecommunications services providing local connectivity to customer premises in the Divestiture MSAs, and (2) the sale of dark fiber on the Intercity Routes, as identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation,**[\*63]** but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

**VII. STANDARD OF REVIEW TINDER THE APPA FOR THE PROPOSED FINAL JUDGMENT**

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in ***antitrust*** cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest.'" [*15 U.S.C. § 16(e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations**[\*64]** set forth in the complaint including consideration of the public benefit, if any, in he derived from a determination of the issues at trial.

[*15 U.S.C. §16(e)(1)(A)-(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." [*United States v. Microsoft Corp., [1995-1 Trade Cases ¶ 71,027] 56 F.3d 1448, 1461, 312 U.S. App. D.C. 378 (D.C. Cir. 1995)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RTP-83N0-001T-D0C7-00000-00&context=); *see* [*United States v. US Airways Group, Inc., [2014-1 Trade Cas. (CCH) ¶ 78,748] 38 F. Supp. 3d 69, 75 (D.D.C. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C2F-7GX1-F04C-Y0FY-00000-00&context=) (noting the court has broad discretion as to the adequacy of the relief at issue); [*United States v. InBev N.V./S.A., No. 08-1965 (JR), 2009 U.S. Dist LEXIS 84787, at \*3 (D.D.C. Aug. 11, 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4X85-40M0-TXFP-H385-00000-00&context=) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the ***antitrust*** violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable"); *see generally* [*United States v. SBC Commc'ns, Inc., [2007-1 Trade Cases ¶ 75,655] 489 F. Supp. 2d 1 (D.D.C. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NCK-65B0-TVT3-D3DR-00000-00&context=) (assessing public interest standard under the Tunney Act).[[8]](#footnote-7)7

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other factors, the relationship between the remedy secured and the specific allegations set forth in the United States complaint, whether the decree is sufficiently dear, whether enforcement mechanisms are sufficient,**[\*65]** and whether the decree may positively harm third parties. *See* [*Microsoft, 56 F.3d at 1458-62*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RTP-83N0-001T-D0C7-00000-00&context=); [*United States v. Iron Mountain, Inc., [2016-2 Trade Cas. (CCH) ¶ 79,820] 217 F. Supp. 3d 146, 151-52 (D.D.C. 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5M4Y-PC91-F04C-Y03M-00000-00&context=) (considering the decree's clarity, sufficiency of compliance mechanisms, and third-party impact). With respect to the adequacy of the relief secured by the decree a court may not "engage in an unrestricted evaluation of what relief would best serve the public." [*United States v. BNS, Inc., [1988-2 Trade Cases ¶ 68,223] 858 F.2d 456, 462 (9th Cir. 1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-Y8S0-001B-K1MJ-00000-00&context=) (quoting [*United States v. Bechtel Corp., [1981-1 Trade Cases ¶ 64,111] 648 F.2d 660, 666 (9th Cir. 1981))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-16H0-0039-W1PJ-00000-00&context=); *see also* [*Microsoft, 56 F.3d at 1460-62*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RTP-83N0-001T-D0C7-00000-00&context=); [*InBev. 2009 U.S. Dist. LEXIS 84787, at \*3*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4X85-40M0-TXFP-H385-00000-00&context=); [*United States v. Alcoa, Inc., [7 rade Cas. (CCH) ¶ 73,434] 152 F. Supp. 2d 37, 40 (D.D.C. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:44N5-9DK0-0038-Y4CW-00000-00&context=) Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed ***antitrust*** consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of ***antitrust*** enforcement by consent decree.

[*Bechtel, 648 F.2d at 666*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-16H0-0039-W1PJ-00000-00&context=) (emphasis added) (citations omitted),[[9]](#footnote-8)8 In determining whether proposed settlement is in**[\*66]** the public interest a district court "must accord deference to the government's predictions about the efficacy of its remedies and May not require that the remedies perfectly match the alleged violations." [*SBC Commc'ns, 489 F. Supp. 2d at 17*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NCK-65B0-TVT3-D3DR-00000-00&context=); *see also* [*Microsoft, 56 F.3d at 1461*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RTP-83N0-001T-D0C7-00000-00&context=) (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); [*Iron Mountain, 217 F. Supp. 3d at 151*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5M4Y-PC91-F04C-Y03M-00000-00&context=) (noting that a court should not reject the proposed remedies because it believes others are preferable); [*United States v. Archer-Daniels-Midland Co., [2003-2 Trade Cas. (CCH) ¶ 74,096] 272 F. Supp. 2d 1, 6 (D.D.C. 2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:494T-VD60-0038-Y0P1-00000-00&context=) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case.").

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is within the reaches of public interest. *United States v. Am. Tel. & Tel. Co., [1982-2 Trade Cas. (CCH) ¶ 64,979] 552 F. Supp. 131, 151 (D.D.C. 1982)* (citations omitted) (quoting [*United States v. Gillette Co., [1975-2 Trade Cases ¶ 60,651] 406 F. Supp. 713, 716 (D. Mass. 1975))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4V-KH30-0054-6289-00000-00&context=), *aff'd sub nom.****[\*67]***[*Maryland v. United States, [1983-1 Trade Cases ¶ 65,233] 460 U.S. 1001, 103 S. Ct. 1240, 75 L. Ed. 2d 472 (1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-53H0-003B-S0M5-00000-00&context=); *see also* [*US Airways, 38 F. Supp. 3d at 75*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C2F-7GX1-F04C-Y0FY-00000-00&context=) ("[R]oom must be made for the government to grant concessions in the negotiation process for settlements." (quoting [*SBC Commc'ns, 489 F. Supp. 2d, at 15*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NCK-65B0-TVT3-D3DR-00000-00&context=))); *United States v. Alcan Aluminum Ltd., [1985-1 Trade Cas. (CCH) ¶ 66,428] 605 F. Supp. 619, 622 (W.D. Ky. 1985)* (approving the consent decree even though the court would have imposed a greater remedy) To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms" [*SBC Commc'ns, 489 F. Supp. 2d at 17*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NCK-65B0-TVT3-D3DR-00000-00&context=).

Moreover, the court's role under the APPA is limited to reviewing, the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." [*Microsoft, 56 F.3d at 1459*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RTP-83N0-001T-D0C7-00000-00&context=); *see also* [*US Airways, 38 F. Supp. 3d at 75*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C2F-7GX1-F04C-Y0FY-00000-00&context=) ("[A] court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable.'" (quoting [*SBC Commc'ns, 489 F. Supp. 2d at 15-16*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NCK-65B0-TVT3-D3DR-00000-00&context=))); [*InBev, 2009 U.S. Dist. LEXIS 84787, at \*20*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4X85-40M0-TXFP-H385-00000-00&context=) ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's**[\*68]** exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. [*Microsoft, 56 F.3d at 1459-60*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RTP-83N0-001T-D0C7-00000-00&context=). As this Court confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." [*SBC Commc'ns, 489 F. Supp. 2d at 15*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NCK-65B0-TVT3-D3DR-00000-00&context=).

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in ***antitrust*** enforcement, adding the unambiguous Instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." [*15 U.S.C. § 16(e) (2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=): *see also* [*US Airways, 38 F. Supp. 3d at 76*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C2F-7GX1-F04C-Y0FY-00000-00&context=) ("[A] court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act"). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might**[\*69]** have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24.598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." [*SBC Commc'ns, 489 F. Supp. 2d at 11*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NCK-65B0-TVT3-D3DR-00000-00&context=).[[10]](#footnote-9)9 "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." [*US Airways, 38 F. Supp. 3d at 76*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C2F-7GX1-F04C-Y0FY-00000-00&context=).

**VIII. DETERMINATIVE DOCUMENTS**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

**Table1 (**[*Return to related document text*](#Table1_insert)**)**

| **Route** | **Origin Gateway Location** | **Termination Gateway** |
| --- | --- | --- |
|  | **Address** | **Location Address** |
| Atlanta to Nashville | 55 Marietta St NW | 460 Metroplex Dr |
|  | Atlanta, GA 30303 | Nashville, TN 37211 |
| Birmingham to | 2001 Park P1 Birmingham, | 4521 Chilton Rd |
| Billingsley | AL 35203 | Billingsley, AL 36006 |
| Charlotte to Atlanta | 731 E Trade St | 55 Marietta St NW, |
|  | Charlotte, NC 28202 | Atlanta, GA 30303 |
| Cleveland to Buffalo | 1501 Euclid Ave | 1090 Harlem Rd Buffalo, |
|  | Cleveland, OH 44115 | NY 14227 |
| Dallas to Memphis | 1950 N Stemmons Fwy | 715 S Danny Thomas Blvd |
|  | Dallas, TX 75207 | Memphis TN 38126 |
| Denver to Dallas | 23751 E 6th Aye Aurora, | 1950 N Stemmons Fwy |
|  | CO 80018 | Dallas, TX 75207 |
| Denver to Kansas | 23751E 6th Ave Aurora, | 711 E 19th St Kansas |
| City | CO 80018 | City, MO 64108 |
| El Paso to San | 201 E Main St El Paso, | 231 Rotary St San |
| Antonio | TX 79901 | Antonio, TX 78202 |
| Houston to New | 11947 N Fwy Houston, TX | 1340 Poydras St New |
| Orleans | 77060 | Orleans, LA 70112 |
| Indianapolis to | 550 Kentucky Ave | 607 Evans St Cincinnati, |
| Cincinnati**[\*38]** | Indianapolis, IN 46225 | OH 45204 |
| Kansas City to St | 711 E 19th St Kansas | 11755 Dunlap Industrial |
| Louis | City, MO 64108 | Dr Maryland Heights, MO |
|  |  | 63043 |
| Los Angeles to Las | 624 S Grand Ave Los | 4275 E Sahara Ave Las |
| Vegas | Angeles, CA 90017 | Vegas, NV 89104 |
| Memphis to Nashville | 715 S Danny Thomas Blvd | 460 Metroplex Dr |
|  | Memphis TN 38126 | Nashville, TN 37211 |
| Miami to | 36 NE 2nd St Miami, FL | 421 W Church St |
| Jacksonville | 33132 | Jacksonville, FL 32202 |
| Nashville to | 460 Metroplex Dr | 550 Kentucky Ave |
| Indianapolis | Nashville, TN 37211 | Indianapolis, IN 46225 |
| Orlando to Daytona | 121 Weber St Orlando, FL | 500 W International |
| Beach | 32803 | Speedway Blvd Daytona |
|  |  | Beach, FL 32114 |
| Phoenix to El Paso | 429 5 6th Dr Phoenix, AZ | 201 E Main St El Paso, TX |
|  | 85003 | 79901 |
| Portland to Salt | 707 SW Washington St | 572 Debug St Salt Lake |
| Lake City | Portland, OR 97205 | City, UT 84104 |
| Raleigh to Charlotte | 115 N Harrington St | 731E Trade St Charlotte, |
|  | Raleigh, NC 27603 | NC 28202 |
| Richmond to Raleigh | 4233 Carolina Ave | 115 N Harrington St |
|  | Richmond, VA 23222 | Raleigh, NC 27603 |
| Sacramento to Salt | 770 L St Sacramento, CA | Salt Lake City, UT 84104 |
| Lake City | 95814 572 Delang St |  |
| Sacramento to San | 770 L St Sacramento, CA | 200 Paul Ave San |
| Francisco | 95814 | Francisco, CA 94124 |
| Salt Lake City to | 572 Delong St Salt Lake | 23751 E 6th**[\*39]** Ave Aurora, |
| Denver | City, UT 84104 | CO 80018 |
| San Diego to Phoenix | 4216 University Ave San | 429 S 6th Dr Phoenix, AZ |
|  | Diego, CA 92105 | 85003 |
| San Francisco to Los | 200 Paul Ave San | 624 S Grand Ave Los |
| Angeles | Francisco, CA 94124 | Angeles, CA 90017 |
| Tallahassee to | 601 Stone Valley Way | 421 W Church St |
| Jacksonville | Tallahassee, FL 32310 | Jacksonville, FL 32202 |
| Tallahassee to Tampa | 601 Stone Valley Way | 5908A Hampton Oaks Pkwy |
|  | Tallahassee, FL 32310 | Tampa, FL 33610 |
| Tampa to Miami | 5908A Hampton Oaks Pkwy | 36 NE 2nd St Miami, FL |
|  | Tampa, FL 33610 | 33132 |
| Tampa to Orlando | 5908A Hampton Oaks Pkwy | 121 Weber St Orlando, FL |
|  | Tampa, FL 33610 | 32803 |
| Washington, DC to | 1500 Eckington Pl, NE | 4233 Carolina Ave |
| Richmond | Washington DC 20002 | Richmond, VA 23222 |

**Table1 (**[*Return to related document text*](#Table1_insert)**)**

**End of Document**

1. \*This does not constitute a portion of the final judgment-CCH. [↑](#footnote-ref-0)
2. 1The full name of this MSA as defined by the Office of Management and Budget is Boise City-Nampa, Idaho. [↑](#footnote-ref-1)
3. 2An MSA is a geographical region defined try the Office of Management and Bridget for use by federal statistical agencies, such as the Census Bureau. It Is based on the concept of a core urban area with a large concentrated population, plus adjacent communities having close economic and social lies to the core. [↑](#footnote-ref-2)
4. 3An incumbent local exchange carrier (ILEC) is the telephone company thus was the sole provider of local exchange service (local phone service) in a given local area prior to passage of the 1996 Telecommunications Art, which allowed for competitive local exchange carriers (CLECs) 10 compete for this local service. [↑](#footnote-ref-3)
5. 4Enterprise customers are broadly defined here to include businesses of varying sizes and institutional customers such as community colleges, hospitals and government agencies. Wholesale customers are, typically, telecommunications carriers seeking to reach customer locations in areas where they do not have wireline infrastructure. [↑](#footnote-ref-4)
6. 5Webscale companies are those primarily engaged in the business of providing large amounts of data to end users through web-based services, they require facilities and infrastructure to create, store, and then transport that data across long distances. [↑](#footnote-ref-5)
7. 6These extensions will be at a price not to exceed 20% of the able to charge exorbitant fees no discourage the acquirer from initial IRU fee. This provision ensures that defendants will not be renewing. [↑](#footnote-ref-6)
8. 7The 2004 amendments substituted "shall" for "may" In directing relevant boors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms *Compare* [*15 U.S.C. §16(e)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=) 12004), *with* [*15 U.S.C. § 16(e)(1) (2066)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GR31-NRF4-44X5-00000-00&context=); *see also* [*SBC Commc'ns 489 F. Supp. 2d. at 11*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4NCK-65B0-TVT3-D3DR-00000-00&context=) (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review). [↑](#footnote-ref-7)
9. 8*Cf.* [*BNS, 858 F.2d at 464*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-Y8S0-001B-K1MJ-00000-00&context=) (holding that the court's "ultimate authority under the [AFPA] in limited to approving or disapproving the consent decree"); ([*United States v. Gillette Co., [1975-2 Trade Cas. (CCH) ¶ 60,651] 406 F. Supp. 713, 716 (D. Mass. 1975)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4V-KH30-0054-6289-00000-00&context=) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally* [*Microsoft, 56 F.3d at 1461*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RTP-83N0-001T-D0C7-00000-00&context=) (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public Interest'"). [↑](#footnote-ref-8)
10. 9*See* [*United States v. Enova Corp., 107 F. Supp. 2d 10, 17 (D.D.C. 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:40T2-X8J0-0038-Y2SJ-00000-00&context=) ("The Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone."); [*United States v. Mid-Am. Dairymen, Inc., No. 73-CV-681-W-1, 1977 U.S. Dist. LEXIS 15858, at \*22 (W.D. Mo. May 17, 1977)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-V3J0-0054-72HT-00000-00&context=) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized."). [↑](#footnote-ref-9)