

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
NPC INTERNATIONAL, INC., et al,	§	Case No. 20-33353 (DRJ)
	§	
Debtors.¹	§	(Jointly Administered)

**OBJECTION OF CENTURYLINK COMMUNICATIONS, LLC TO
NOTICE OF CURE AMOUNTS AND POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES
IN CONNECTION WITH SALE TRANSACTION (Doc. 781)**

**TO THE HONORABLE CHIEF UNITED
STATES BANKRUPTCY JUDGE, DAVID R. JONES:**

COMES NOW, CenturyLink Communications, LLC, including its parents, subsidiaries, and affiliates, including Level 3 Communications, LLC (collectively, “CenturyLink”), files this Objection (“Objection”) to the *Notice of Cure Amounts and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection With Sale Transaction* [Docket No. 781] (the “Cure Notice”) and respectfully shows as follows:

INTRODUCTION

CenturyLink delivers telecommunications solutions to the above-captioned debtors (the “Debtors”) under various agreements. In the Cure Notice, the Debtors propose the cure amounts for potentially assuming and assigning certain unidentifiable agreements with CenturyLink. Although CenturyLink does not generally oppose any assumption and assignment of its agreement with the Debtors, subject to the provision of “adequate assurance of future performance” by any

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are NPC International, Inc. (7298); NPC Restaurant Holdings I LL (0595); NPC Restaurant Holdings II LLC (0595); NPC Holdings, Inc. (6451); NPC International Holdings, LLC (8234); NPC Restaurant Holdings, LLC (9045); NPC Operating Company B, Inc. (6498); and NPC Quality Burgers, Inc. (6457). The Debtors’ corporate headquarters and service address is 4200 W. 115th Street, Suite 200, Leawood, KS 66211.

buyer approved by the Court, CenturyLink objects to such to the extent that: (1) the proposed cure amount fails to satisfy all existing defaults under all of these agreements in accordance with 11 U.S.C. § 365(b); and (2) the Debtors' Cure Notice does not specify the precise agreements the Debtors wish to assume and assign.

FACTS

1. CenturyLink delivers telecommunications solutions in the form of telecommunications equipment and services to the Debtors.

2. CenturyLink, either directly or through its related entity, Level 3 Communications, LLC ("Level 3"), is a party to several agreements with the Debtors:

- a. "Qwest Total Advantage Agreement-Option Z" dated on or about July 11, 2007, as amended (the "Qwest Agreement") wherein CenturyLink provides services and equipment to the Debtors; and
- b. Series of purchase orders (the "Level 3 Agreement") wherein Level 3 provides services and equipment to the Debtors.

3. On July 1, 2020, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the "Petition Date").

4. On the Petition Date, the amount owing from Debtors to: i) CenturyLink under the Qwest Agreement was \$182,567.05; and ii) Level 3 under the Level 3 Agreement was \$752.40.

5. The Debtors are operating their businesses and maintaining their assets as debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

6. CenturyLink has continued to provide services to the Debtors following the Petition Date. The amount owing from Debtors to: i) CenturyLink under the Qwest Agreement was \$122,171.24, as of October 19, 2020; and ii) Level 3 under the Level 3 Agreement was \$1,515.56, as of October 21, 2020.

7. On October 9, 2020, the Debtors filed the Cure Notice proposing: i) assumption of an “Internet Service Agreement [dated 10-30-18]” with a proposed cure amount of \$30,512; and ii) assumption of a “Total Advantage Express Agreement [dated 10-25-18]” with no proposed cure amount stated.

OBJECTIONS

8. CenturyLink does not oppose the assumption and assignment of the Qwest Agreement and Level3 Agreement (collectively, the “Agreements”) provided that it receives the proper cure required by 11 U.S.C. § 365. The Debtors currently owe \$183,319.45 for outstanding pre-petition services and \$123,686.80 for outstanding post-petition services under the Agreements. The total amount owed to CenturyLink is \$307,006.25.

9. CenturyLink does not oppose the assumption and assignment of the Agreements provided that they are specifically identified. CenturyLink is unaware of precisely which agreements the Debtors refer to in the Cure Notice and how those relate to the Agreements.

ARGUMENT AND AUTHORITIES

10. 11 U.S.C. § 365(b)(1) states, in pertinent part:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) *cures, or provides adequate assurance that the trustee will promptly cure such default . . . ;*

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1)(emphasis supplied).

11. A cure under 11 U.S.C. § 365 means all unpaid amounts due under the agreement have been paid. *In re Network Access Solutions, Corp.*, 330 B.R. 67, 76 (Bankr. D. Del. 2005). Accordingly, unless and until the Debtors cure the pre- and post-petition balances owed to CenturyLink, the Debtors cannot assume and assign any of the Agreements.

12. The post-petition balances are also accorded administrative status. Section 503(b)(1) of the Bankruptcy Code provides in relevant part:

(b) After notice and hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) the actual necessary costs and expenses of preserving the estate. . . .

11 U.S.C. § 503(b)(1).

13. Because the Debtors require the benefits of the Agreements and CenturyLink's telecommunications equipment and services post-petition so that their businesses can function, the expenses incurred arose post-petition and establish a post-petition transaction between the Debtors and CenturyLink.

14. The Debtors' reliance on CenturyLink during these proceedings is further evidenced by the fact the Debtors listed CenturyLink as utility providers in the *Emergency Motion of Debtors for Order (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment to Utility Companies; (II) Establishing Procedures for Resolving Objections by Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief* [Docket No. 13]. Specifically, the Debtors acknowledged that "[c]ontinuing the Utility Services without interruption is essential to the Debtors ongoing business and the success of the Debtors' Chapter 11 cases." [Dkt. 13, p. 4]; *see also Order Approving Debtors' Proposed Form of Adequate Assurance of Payment to Utility Companies; (II)*

Establishing Procedures for Resolving Objections by Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, and (IV) Granting Related Relief [Docket No. 107].

15. Section 503(b)(1) is intended “to provide an incentive for creditors to continue doing business with a debtor and an incentive for others to engage in business transactions with the debtor.” 4 *Collier on Bankruptcy*, 503.06[2] (16th ed. 2020). CenturyLink acted in accordance with the policies behind the statute and provided critical support to the Debtors.

16. Alternatively, 11 U.S.C. § 365(d)(5) requires the Debtors to “timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property . . . until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title”

17. The telecommunications equipment and services delivered by CenturyLink to the Debtors include private telecommunications lines in the forms of loops and private ports – personal property – among other types of potential personal property.

18. Courts recognize that analyses entitling section 365(d)(3) claims to administrative treatment under section 503(b) are applicable to section 365(d)(5) claims as well. *In re Bella Logistics LLC*, 583 B.R. 674, 681, n.7 (Bankr. W.D. Tex. 2018).

19. CenturyLink does not seek more than the amounts due under the relevant invoices as a cure. CenturyLink reserves the right to amend the cure amount demanded, reserves its rights under the Agreements and the Bankruptcy Code, and intends to work with the Debtors to reach an agreement as to the precise account numbers and amounts necessary to fully cure the Agreements.

WHEREFORE, PREMISES CONSIDERED, CenturyLink respectfully requests this Court enter an Order (i) conditioning the assumption and assignment of all of the Agreements upon payment of the cure amount described herein; (ii) conditioning any assumption and assignment on the Debtors disclosing the precise account numbers and corresponding agreements the Debtors wish to cure, assume and assign; and (iii) granting such other and further relief as this Court deems equitable and proper.

Respectfully submitted,

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**ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2020, a true and correct copy of the foregoing was served, upon filing, via the Court's CM/ECF system upon those parties requesting electronic notification in this case as well as via first class mail, postage prepaid, to the parties listed on the below:

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