

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

<i>In the Matter of</i>)	
)	
QWEST COMMUNICATIONS)	WC Docket No. 10-110
INTERNATIONAL INC. and)	
)	
CENTURYTEL, INC. D/B/A)	
CENTURLINK)	
)	
Application for Transfer of Control Under)	
Section 214 of the Communications Act, as)	
Amended)	

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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SUMMARY

Based on its review of initial comments, New Jersey Division of Rate Counsel recommends that if the Federal Communications Commission intends to approve the CenturyLink-Qwest transaction, it do so conditional upon verifiable and enforceable conditions that do not sunset regarding broadband deployment, retail service quality, wholesale service quality, and wholesale operations. CenturyLink's back-to-back integration of three companies' systems (first, Embarq's and CenturyTel's operations, followed by the integration of CenturyLink's and Qwest's operations) combined with CenturyLink's pursuit of synergies likely will jeopardize the quality of basic local exchange and wholesale services. On balance, as it is presently structured, the proposed transaction poses risks that far outweigh the anticipated benefits, and, therefore, absent conditions, consumers will be worse off if the transaction occurs.

Broadband conditions should further the goals set forth in the National Broadband Plan, and result in affordable retail and wholesale broadband service throughout CenturyLink's expanded footprint. Retail service quality conditions should ensure that CenturyLink adopts best practices, and that CenturyLink continues to provide ARMIS service quality data so that the FCC can monitor its performance. Conditions relating to CenturyLink's wholesale operations should similarly ensure that CenturyLink adopts best practices relating to wholesale and OSS service quality, that special access rates, terms, and conditions are reasonable, and that other carrier-to-carrier relationships are either maintained on a best-practices basis or improved.

Furthermore, the synergies that the Applicants project should be used to offset any negative impact on CenturyLink's revenues that could result from decisions rendered by the FCC in the intercarrier compensation, special access and universal service proceedings. CenturyLink should commit to not recover foregone revenues from consumers and rivals through increases in subscriber line charges or other rate elements.

Finally, the FCC should issue a detailed information and data request to the Applicants regarding the transaction, CenturyLink's ability and willingness to abide by conditions, and the impact of the transaction on consumers and competitors.

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I. INTRODUCTION

With this filing, the New Jersey Division of Rate Counsel (“Rate Counsel”) replies to the comments and petitions to deny regarding the application by Qwest Communications International Inc. (“Qwest”) and CenturyTel, Inc. (“CenturyLink”) (jointly “Applicants”),¹ that were submitted to the Federal Communications Commission (“FCC” or “Commission”). Initial comments raise concerns that merit the FCC’s consideration as it reviews the proposed transaction, and, in many instances, raise concerns that are similar to those that Rate Counsel discussed in its initial comments.²

¹ / Qwest Communications International Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, Application for Transfer of Control Under Section 214 of the Communications Act, as Amended (filed May 10, 2010) (“Application”). On May 20, 2010, the transferee’s company name changed to CenturyLink, Inc. Id., at 38, n. 63.

² / In addition to Rate Counsel, initial comments were filed by Access Point, Inc., Covad Communications Company, Deltacom, Inc., Granite Telecommunications, LLC, HickoryTech Corporation (d/b/a HickoryTech and Enventis), Metropolitan Telecommunications, Inc., OrbitCom, Inc., PAETEC Holding Corp., on behalf of its operating subsidiaries, PAETEC Communications, Inc., US LEC, and McLeodUSA Telecommunications Services, Inc., TDS Metrocom, LLC, U.S. TelePacific and Mpower

Fewer than two dozen parties submitted initial comments, but the relative paucity of comments does not necessarily imply that there is widespread support for this transaction. On the contrary, public interest groups and consumer advocates may believe that objecting to this transaction is an exercise in futility. For example, given the string of merger approvals in recent years, NASUCA resigns itself to the eventual approval of the transaction, but notes that the Commission should give special attention to the issues of special access, intercarrier compensation, and universal service funding relevant to the transaction.³ NASUCA states that it “will ... merely state that if the Commission is to approve this transaction it must adopt conditions that are equally – if not more – protective of competition and beneficial to consumers than it did in the CenturyTel/Embarq and Frontier/Verizon transactions. Only then will there be an assurance that the public interest requirements of 47 U.S.C. §§ 214(a) and 310(d) are met.”⁴

The majority of the initial comments were submitted by wireless carriers and competitive local exchange carriers (“CLECs”), which seek to ensure that the Applicants do not use the increased market power that would result from the transaction to

Communications Corp., both d/b/a TelePacific Communications (“Access Point et al.”); ADTRAN, Inc. (“ADTRAN”); Aventure Communications Technology, LLC and Northern Valley Communications, LLC, (“Aventure and Northern Valley”); Broadvox, Inc. (“Broadvox”); Broadvox-CLEC, LLC (“Broadvox-CLEC”); Cbeyond, Inc., Integra Telecom, Inc., Socket Telecom, LLC, and tw telecom inc. (“Cbeyond et al.”); Cedar Falls Utilities; COMPTTEL; Cox Communications and Charter Communications, Inc. (“Cox and Charter”); Communications Workers of America (“CWA”); Infotelcom, LLC (“Infotelcom”); Leap Wireless International, Inc., (“Leap Wireless”); Mabuhay Alliance; National Association of State Utility Consumer Advocates (“NASUCA”); Pac-West Telecomm, Inc., (“Pac-West”); and Sprint Nextel Corporation (“Sprint Nextel”).

³ / NASUCA, at 3.

⁴ / *Id.*

disadvantage competitors. Mabuhay Alliance seeks to prevent further consolidation in the telecommunications industry, particularly in the market for landline voice service.⁵

Only one party submitted comments in favor of the transaction. ADTRAN, a supplier of broadband access equipment, asserts that the transaction is favorable because “[t]he combined company will ... be able to compete more effectively against the other video and broadband service providers now operating in their regions.”⁶ However, as these comments discuss below, other commenters point to the *lack* of video and broadband competition in the region, and the difficulties CLECs have acquiring the network elements necessary to provide these services. Rate Counsel agrees with several commenters that the Applicants have failed to provide sufficient support for the benefits to consumers the Applicants claim will occur as a result of this transaction.⁷

II. DISCUSSION OF TRANSACTION’S BENEFITS

A. APPLICANTS DO NOT SUPPORT THEIR CLAIM THAT THE TRANSACTION WILL INCREASE BROADBAND DEPLOYMENT

CWA points out that although CenturyLink promises that the transaction will result in wider deployment of broadband and greater bandwidth in areas where broadband already exists, the Applicants fail to provide relevant detail.⁸ Rate Counsel agrees that the Applicants’ promises regarding broadband are vague and unsupported. CWA also asserts that CenturyLink has so far failed to live up to the commitments it made in order

⁵ / Mabuhay Alliance, at 1.

⁶ / ADTRAN, at 4.

⁷ / In their initial filing, the Applicants claim that consumers would benefit from the transaction in several ways, including through increased deployment of broadband capability, increased roll-out of IPTV technology, and greater financial strength that the transaction would create for the Applicants. Application, at 10-11.

⁸ / CWA, at 13-14. *See also* Access Point et al., at 3 and 33; Cbeyond et al., at 67-68.

to gain approval of the CenturyTel-Embarq transaction a year ago.⁹ One of the commitments made as part of that approval was that CenturyLink would achieve deployment to enable broadband access of 3 Mbps or greater to at least 75% of the broadband-enabled lines in its service territory.¹⁰ According to CWA, based on data provided by the Applicants, CenturyLink has achieved broadband deployment at speeds of 3 Mbps or greater for only 71.6% of these lines.¹¹ Furthermore, even if CenturyLink *had* already achieved these goals, as CWA observes, this level of service would still fall short of the goal set forth by the FCC in the National Broadband Plan.¹² CWA also notes that the commitments in the CenturyTel-Embarq merger are weaker than those associated with the more recent purchase of Verizon's rural assets by Frontier.¹³ Rate Counsel concurs with CWA that stronger broadband commitments than those linked to the CenturyTel-Embarq merger are essential in order to realize the goals set forth by the FCC in its National Broadband Plan.¹⁴

Furthermore, in its deliberations, the FCC should consider the information contained in the recently-released *Sixth Broadband Deployment Report*,¹⁵ which shows

⁹ / CWA, at 13-14.

¹⁰ / *Id.*, at 13. See also In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc., Memorandum Opinion and Order, WC Docket No. 08-238, June 25, 2009, at para. 40 and Appendix C. "The CenturyTel/Embarq broadband commitments are as follows: by 2012 (3 years after merger close) 10% of lines must have broadband of 200 kbps or greater, 10% at 768 kbps or greater, and 80% at 3 mbps or greater. Interim benchmarks require by July 2010, that 75% of broadband accessible lines must be at 3 Mbps or greater by July 2010. By July 2011, 87% of broadband accessible lines must be at 1.5 Mbps or greater and 78% must be at 3 Mbps or greater." *Id.*, at footnote 23. CWA, at footnote 23.

¹¹ / CWA, at 13.

¹² / *Id.*, at 14.

¹³ / *Id.*, at 14 and footnote 24.

¹⁴ / See Rate Counsel, at 29-31.

¹⁵ / In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data

state by state, and in some cases county-by-county, where broadband deployment remains sub-par. According to the *Report*, the FCC's model of broadband availability, confirmed by Form 477 reporting, shows that approximately 14 million Americans do not have access to the Internet at a level of service that meets the definition of broadband.¹⁶ The *Report* concludes "that broadband deployment to all Americans is not reasonable and timely."¹⁷ The *Report* also states that "[i]f the Commission finds that broadband is not being deployed in a reasonable and timely manner, it must 'take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.'"¹⁸ With this mandate in mind, if the Commission approves the CenturyLink-Qwest transaction, it should condition such approval on concrete and verifiable commitments to accelerate broadband deployment, consistent with the recommendations set forth in Rate Counsel's and others' initial comments.¹⁹

B. APPLICANTS DO NOT SUPPORT THEIR CLAIM THAT THE TRANSACTION WILL INCREASE THE ROLLOUT OF IPTV

Although the Applicants promise that the transaction will enable Qwest customers to benefit from greater availability of IPTV,²⁰ CWA is skeptical: CWA points out that, although CenturyTel promised IPTV as a benefit of the CenturyTel-Embarq transaction,

Improvement Act A National Broadband Plan for Our Future, GN Docket No. 09-137 and GN Docket No. 09-51, Sixth Broadband Deployment Report, rel. July 20, 2010 ("Sixth Broadband Report").

¹⁶ / *Id.*, at para. 18.

¹⁷ / *Id.*, at para. 2.

¹⁸ / *Id.*, at para. 29. See also 47 U.S.C. § 1302(b).

¹⁹ / Rate Counsel, at 29-31.

²⁰ / Application, at 15.

one year later, no legacy Embarq market yet has access to IPTV.²¹ Furthermore, CenturyLink's IPTV initiative is limited so far to only three markets.²² CWA questions whether CenturyLink's IPTV promise in this transaction is similarly unfounded.²³

Rate Counsel agrees that the FCC should discount heavily Applicant's vague promise to increase IPTV availability, not only because CenturyLink's past performance indicates a failure to follow through with IPTV commitments, but also because the increased availability of IPTV does not provide a sufficiently great benefit to offset the risks that the proposed merger poses.

III. IMPACT OF TRANSACTION ON CONSUMERS

A. THE TRANSACTION REDUCES COMPETITION

Initial comments demonstrate that the proposed transaction would decrease actual and potential competition, which in turn would harm consumers through the loss of diversity, innovation, and reasonable rates. Several commenters point to the enlarged territory of the combined company, which would enable the Applicants to increase market power.²⁴ Initial comments also refer to the so-called "big footprint" theory, that is, the theory that the larger a firm's service area is, the greater is its rewards for acting in an anticompetitive manner.²⁵

Access Point et al. argues that, based on their respective boasts, CenturyLink and Qwest are actual and potential competitors, on both a geographical basis,²⁶ and according

²¹ / CWA, at 15.

²² / *Id.*, citing to Application, at 15.

²³ / CWA, at 15; Access Point et al., at 36-37.

²⁴ / Sprint Nextel, at 5-6; Cox and Charter, at 4; COMPTTEL, at 2; Cbeyond et al., at 7, 49-50.

²⁵ / *See, e.g.*, Cbeyond et al., at 49-50; Cox and Charter, at 4, 7, and footnote 16.

²⁶ / Access Point et al., at 18-19.

to type of customers.²⁷ These sentiments are echoed by other commenters, including Sprint Nextel, which notes that the transaction will eliminate competition in parts of Minnesota, Washington, Florida, and Alabama.²⁸

Other commenters argue that the transaction will erode competition in the provision of special access, an element that is essential to competition.²⁹ Specifically, Access Point et al. notes that because the Applicants have built special access capacity in each other's current service territory, the proposed transaction would reduce competition and consolidate market power.³⁰ Cbeyond et al. notes that there is a risk that the combined company will discontinue Qwest's special access incentive pricing, and raise rates for special access.³¹ Sprint Nextel argues that wireless carriers are particularly vulnerable to post-merger rate increases.³²

Consumers benefit when the market for a good or service is populated by many firms competing for business by offering a lower price and/or better service. Any reduction in actual or potential competition therefore represents a harm to consumers. Furthermore, the Commission should consider not only an absolute reduction in the number of competitors, but also the potential and incentive for the combined company to limit the supply of, or raise the rates of, essential inputs to wholesale customers that provide a competitive check on the Applicants. Based on the comments submitted in this proceeding by CLECs, discussed above, Rate Counsel urges the Commission to examine

²⁷ / *Id.*, at 20-21.

²⁸ / Sprint Nextel, at 4. *See also* COMPTEL, at 3.

²⁹ / Sprint Nextel, at 5; COMPTEL, at 7.

³⁰ / Access Point et al., at 11.

³¹ / Cbeyond et al., at 42.

³² / Sprint Nextel, at 5.

closely the effects of the proposed transaction on the merged entity's provision of essential wholesale elements to its competitors, and furthermore, if the Commission approves the transaction to do so conditional on specific, verifiable conditions, as are discussed below.

B. THE FINANCIAL VIABILITY OF THE COMBINED COMPANY

Initial comments raise concerns about the financial viability of the proposed transaction. CWA quotes Morningstar analysts: "CenturyTel is taking an unnecessary risk with the Qwest merger," and "the timing and scope of the Qwest deal will present far greater challenges" than the previous transaction.³³ CWA also noted that investment rating firm Moody's recently downgraded CenturyLink's bond rating, explaining, "the negative rating outlook for CenturyTel reflects the considerable execution risks in integrating a sizeable company so soon after another large acquisition (Embarq in July 2009) while confronting the challenges of a secular decline in the wireline industry."³⁴ As initial comments indicate, Standard and Poor's echoed these views: "Integration efforts will be difficult given the size of the combined company and CenturyTel's integration of previously acquired Embarq will likely not be complete until the end of 2011."³⁵ Cbeyond et al. notes that "at the conclusion of the transaction, legacy CenturyTel will have more than quadrupled its debt load in approximately three years,"³⁶ and argues that with the combined company's increasing debt load, commitment to pay

³³ / CWA, at 11, quoting Morningstar Report, "CenturyTel is Taking an Unnecessary Risk with the Qwest Merger, in Our View," May 27, 2010.

³⁴ / *Id.*, at 11-12, quoting Moody's Investor's Service, "Moody's changes CenturyTel's outlook to negative; reviews Qwest's ratings for upgrade," April 22, 2010.

³⁵ / *Id.*, at 11-12, quoting Standard and Poor's Global Credit Portal Ratings Direct, "Research Update: CenturyTel - BBB - Rating on Watch Negative on Deal to Acquire Qwest Communications; Qwest BB Rating on Watch Positive," April 22, 2010.

³⁶ / Cbeyond et al., at 45.

dividends, and significant integration costs, the merged company will have a powerful incentive to achieve synergies by cutting wholesale service quality.³⁷ Rate Counsel recommends that the Commission seek additional information from the Applicants regarding the impact of the proposed transaction on the financial viability of CenturyLink, and on the relationship of the synergies to CenturyLink's future wholesale and retail service quality.

C. THE TRANSACTION REPRESENTS A LOSS OF A SIGNIFICANT REGULATORY BENCHMARK

Consumers benefit when they and regulators are able to measure the performance and quality of service offered by one company against another. Due to several mergers over the past half-decade, the family of companies available for comparison has shrunk.³⁸ Cbeyond et al. notes that in the case of Qwest and CenturyLink, there are in fact no other companies against which to compare their performance.³⁹ This loss of regulatory information underscores the need for enforceable commitments by the Applicants to ensure that consumers gain from and are not harmed by the transaction.

D. POTENTIAL SERVICE QUALITY PROBLEMS OVERSHADOW THE TRANSACTION

As did Rate Counsel,⁴⁰ CWA raises concerns about the impact of the transaction on retail service quality. Relying on FCC ARMIS data, CWA shows that Qwest's repeat out of service record exceeds the industry average for every year 2003 through 2009. In

³⁷ / *Id.*, at 7.

³⁸ / Rate Counsel, at 7-8, 25 and footnote 4.

³⁹ / Cbeyond et al., at 7 and 66. *See also* Access Point et al., at 3 and 24.

⁴⁰ / Rate Counsel, at 20-25.

2009, Qwest's metric exceeds the industry as a whole by 20% (18.2% compared to 14.6%).⁴¹ CWA hypothesizes that some of this deficiency in service quality may be due to underinvestment stemming from Qwest's financial difficulties earlier in the early 2000s.⁴²

However, as Rate Counsel noted in initial comments, the two legacy components of CenturyLink, CenturyTel and Embarq, each have an even worse service quality record than does Qwest.⁴³ CWA's and Rate Counsel's analyses demonstrate that the Commission should consider carefully those aspects of the transaction that might affect the level of service quality that consumers receive. The Commission should not approve the transaction if efforts to achieve synergies will jeopardize consumers' basic service quality.⁴⁴

IV. PROPOSED TRANSACTION AND COMPETITION

A. CENTURLINK HAS LITTLE EXPERIENCE PROVIDING WHOLESALE SERVICE

Initial comments emphasize that the transaction would harm wholesale customers because CenturyLink has far less experience than does Qwest in servicing wholesale demand, OSS integration could go badly, previous integrations have gone awry, and CenturyLink is still integrating Embarq.⁴⁵ CWA states that the "acquisition will transfer Qwest's long-haul transport business to CenturyLink, a rural local exchange carrier that

⁴¹ / CWA, at 15.

⁴² / *Id.*

⁴³ / Rate Counsel, at 20-25.

⁴⁴ / Given that the Applicants claim to have little overlap in service territory before the merger, CWA questions how the estimated savings in operating costs can be realized without cutting either workforces or wages. CWA, at 16-17. *See also*, Access Point et al. et al., at 36-37.

⁴⁵ / *See, e.g.*, Cbeyond et al., at 7-8.

has never operated this line of business, creating new complexities for the merged entity.”⁴⁶

Furthermore, as Cbeyond et al. state, the FCC has never reviewed the proposed acquisition of an entire Bell operating company (“BOC”) by a non-BOC ILEC:⁴⁷

In fact, CenturyLink has very limited experience, expertise or apparent interest in providing wholesale services to competitors in its territory. There is a significant risk that CenturyLink will simply be unable to live up to the obligations of a BOC to meet the “competitive checklist” of Section 271 and the nondiscrimination requirements of Section 272(e). Moreover, the Merged Company will be highly leveraged and subject to enormous pressure to both lower costs and increase revenues. The most logical means of achieving both of those objectives is to reduce expenses and investment in operations, including wholesale operations. Doing so would allow the Merged Company to reduce costs while creating an unfair competitive advantage in the marketplace.⁴⁸

This unique aspect of the transaction underscores the importance of the FCC conducting a thorough review of the implications for wholesale operations and competition in the new footprint. Consumers and competitors ideally should be better off, and certainly should not be worse off as a result of a non-BOC acquiring a BOC. Substantial work was undertaken by federal and state regulators, consumer advocates, and competitors in reviewing Qwest’s compliance with Section 271 requirements. It would be contrary to the public interest for the transaction to yield *worse* wholesale operations.

B. APPLICANTS HAVE PROVIDED LITTLE INFORMATION

REGARDING INTEGRATION OF OPERATIONAL SUPPORT SYSTEMS

Cox and Charter observe that Embarq’s OSS was so much better than

⁴⁶ / CWA, at 2.

⁴⁷ / Cbeyond, et al., at 2.

⁴⁸ / *Id.*, at 3.

CenturyTel's OSS that the Commission ordered CenturyLink to adopt Embarq's system within 15 months of the acquisition, and further observe that Qwest's systems are even better than Embarq's.⁴⁹ Access Point et al. asserts that the Applicants have provided no information about how CenturyLink will reconcile discrepancies between operations, nor how the transaction will affect the OSS, and further states that Qwest's OSS is Section 271 compliant, but that CenturyLink's OSS is not. The FCC should examine further CLECs' concern that the transaction's disruption to OSS will disadvantage CLECs.⁵⁰ Qwest's OSS was subject to a rigorous Section 271 examination, and CenturyLink's OSS has never been subject to a comparably rigorous scrutiny.⁵¹

V. APPLICANTS' CONDUCT

Several commenters raise serious concerns about the Applicants, which, if true, should give the Commission pause in its review of this transaction. In particular, at a time when competition is still not widespread, and when CLECs and wireless carriers continue to rely on ILECs for essential inputs, some commenters allege that Qwest and CenturyLink make strategic use of "worst practices" to weaken competitors.⁵² Rate Counsel urges the Commission to investigate these allegations completely before considering approval of this transaction.

According to Aventure and Northern Valley, Qwest has in some cases refused to pay access charges to CLECs, and states that "[i]n most instances, Qwest Communications refuses and has refused for many years to pay any access charges,

⁴⁹ / Cox and Charter, at 14.

⁵⁰ / Access Point et al., at 2 and 8.

⁵¹ / Cbeyond, et al., at 8-17.

⁵² / See, e.g., Access Point et al. et al., at 77; Aventure and Northern Valley, at 10; Broadvox, at 7.

whether or not the calls are terminated to conference calling providers or to businesses and individuals that Qwest Communications does not dispute are the LEC's end users.”⁵³

Commenters also accuse Qwest of engaging in frivolous lawsuits to weaken, distract, and harass competitors. Broadvox details an access charge dispute with Qwest in which Qwest brought suit against Broadvox in Washington, a state in which Broadvox has no operations, no employees, no real estate, and no representative. Broadvox concludes, and a Washington judge agreed, that the lawsuit was frivolous, and designed simply to harass and annoy Broadvox.⁵⁴ However, according to Broadvox, Qwest continues to file appeals and new suits against Broadvox in other jurisdictions, and interferes with Broadvox’s relationships with other companies.⁵⁵

Qwest has several complaints pending against CLECs alleging that they failed to make available to the public off-tariff agreements. Access Point et al. alleges that these complaints are designed to harass and intimidate the CLECs, and to cause them to spend resources to defend themselves against frivolous claims.⁵⁶ Access Point et al. recommends that the transaction be approved only if Qwest agrees to “(1) withdraw the above-discussed complaints against CLECs with prejudice, (2) not file amended complaints against other CLECs in these proceedings, and (3) not file similar complaints against CLECs in any other jurisdiction. Upon merging, Applicants shall not file similar complaints against CLECs in any jurisdiction.”⁵⁷

Rate Counsel recommends that the Commission investigate thoroughly the

⁵³ / Aventure and Northern Valley, at 1.

⁵⁴ / Broadvox, at 4.

⁵⁵ / *Id.*, at 5-6.

⁵⁶ / Access Point et al., at 75.

⁵⁷ / *Id.*, at 77.

allegations that Qwest engages in frivolous lawsuits in an attempt to project and protect market power. Similarly, the Commission should investigate the accusations that the Applicants fail to pay access charges, and charge others access charges in excess of the proper amount.

Comments also raise serious concerns about CenturyLink's special access performance in comparison with that of Qwest:

The result of this collaborative process is that Qwest is currently tw telecom's leading service provider in terms of special access performance metrics (e.g., on time due date percentage and mean time to repair). Qwest also provides tw telecom with monthly special access performance reports which allow tw telecom representatives to monitor Qwest's performance. By contrast, in tw telecom's experience, CenturyLink's wholesale special access service performance is poor, and CenturyLink has not demonstrated an interest in improving the level of service performance or customer service that it provides to tw telecom. Indeed, the Commission's ARMIS service quality data confirms that CenturyLink's special access service performance is inferior to that of Qwest.⁵⁸

According to Cox and Charter, CenturyLink uses its fractured network of operating companies to claim protections as a rural carrier, which creates distortions and inefficiencies for competitors.⁵⁹ They recommend that “[i]f the merger is consummated, CenturyLink should no longer be able to avail itself of rural company status anywhere and thereby avoid its obligations to comply with the competitive protections that the law provides to companies competing with large ILECs.”⁶⁰

VI. CONDITIONS

Based on its review of others' comments, Rate Counsel continues to support the

⁵⁸ / Cbeyond, et al., at 39 (cites omitted).

⁵⁹ / Cox and Charter, at 5-6.

⁶⁰ / *Id.*, at 6.

conditions described in its initial comments.⁶¹ Rate Counsel also supports the market-opening provisions advocated by CLECs and wireless carriers.⁶² Because of the serious anticompetitive risks that the transaction poses, enforceable conditions are critical to ensure that the transaction does not harm CenturyLink's rivals, and thereby deny consumers the benefits of competition. Conditions should be designed to ensure that CenturyLink adopts wholesale best practices rather than allowing wholesale practices to deteriorate to the lowest common denominator. Among the conditions to ensure that competition can evolve efficiently that the FCC should consider are:

- **Ensure that the FCC's orders issued in the intercarrier compensation proceeding, special access proceeding, and universal service proceeding not lead to higher rates for consumers.** The synergies that the Applicants project should be used to offset any negative revenue impact that could result for CenturyLink as a result of decisions rendered by the FCC in the intercarrier compensation, special access and universal service proceedings. CenturyLink should commit to not recover foregone revenues from consumers.
- **Ensure that post-merger special access rates are just and reasonable.** Special access rates should not increase if the transaction occurs, and indeed, based on the information in the FCC's interstate special access proceeding, likely should decrease. Therefore, Rate Counsel supports recommendations to, at a minimum, cap special access rates.⁶³ Access Point points out that the 42-month cap on

⁶¹ / Rate Counsel, at 27-34.

⁶² / Additional CLEC recommendations may be proposed in future months. *See, e.g.*, Cbeyond, et al, at 71, indicating that it will propose a comprehensive list of conditions after reviewing the Applicants' response to comments.

⁶³ / COMPTTEL, at 9; Sprint Nextel, at 7; Access Point, at 42-44, 61-62; Leap Wireles, at 4, 8-9.

special access rate increases implemented as part of the AT&T/BellSouth merger did not prevent harm to competition: AT&T announced that special access rates would increase three years in advance, as soon as the 42-month period was complete.⁶⁴ Rate Counsel supports Access Point’s recommendation of a seven-year cap on special access rates.⁶⁵ Also, CenturyLink should re-initialize the special access price cap index.⁶⁶

- **Commit to avoid anticompetitive practices and to adopt wholesale “best practices.”** Applicants should be required to commit to refrain from engaging in frivolous lawsuits as described above and withholding payment of access charges. Moreover, the Applicants should be required to commit to and prove compliance with a wholesale service quality plan that ensures timely service to wholesale customers.
- **Require CenturyLink to adopt Qwest’s OSS within a reasonable time frame.** Because Qwest’s OSS is superior to CenturyLink, the FCC should require CenturyLink to adopt Qwest’s OSS in a reasonable time frame.⁶⁷
- **Improve competitive environment for broadband.** The Applicants should be required to improve the possibility for competition by ceasing to retire last mile copper loop; providing unbundled access to copper loop; and providing unbundled access to packetized bandwidth of hybrid fiber-copper loop and FTTH and FTTC loops for providing service to small and medium sized business

⁶⁴ / Access Point, at 43.

⁶⁵ / Access Point, at 43. Rate Counsel also urges the Commission to resolve its long-pending investigation into interstate special access services.

⁶⁶ / Sprint Nextel, at 8.

⁶⁷ / See, e.g., Cbeyond, et al., at 41.

customers. Applicants should make available through commercial agreements within the Qwest/CenturyLink ILEC territories ADSL service to ADSL-capable customers and ISP service where Applicants currently offer such service. Applicants should promote the development of broadband competition by offering broadband services available for resale at a 30% resale discount.

- **Interconnection agreements.** Applicants should extend the duration of existing interconnection contracts, allow “porting” of interconnection agreements across state lines and to other companies, adopt standard agreements across the merging entity’s entire footprint, allow agreements with Qwest to be ported to CenturyLink areas based on Qwest’s pricing, allow “opt in” requests to intercarrier connection agreements from CLECs, and allow carriers to use its preexisting agreement as the starting point for a new agreement.
- **Section 271 network elements.** The Applicants should provide evidence that all Section 271 network elements are available at reasonable rate, terms, and conditions.
- **Agree that the combined company be considered a BOC.** The Applicants should agree that the combined company will be considered a Bell operating Company, with all of the attendant responsibilities.
- **Comprehensive wholesale protection.** Cbeyond, et al. also attached detailed preliminary merger conditions that CLECs proposed in respond to a data requests issued by the Arizona Corporation Commission in its state review of the transaction.⁶⁸ These recommendations merit consideration by the FCC as well.

⁶⁸ / Cbeyond, et al., at Attachments C and D.

Rate Counsel intends to continue to refine its proposed conditions as additional information becomes available in this proceeding, and based on its review of the Applicants' response to initial comments submitted.

VII. CONCLUSION

Initial comments demonstrate that the vastly increased scale and scope of CenturyLink's operations combined with the challenge of back-to-back integrations of numerous systems and operations could jeopardize the rates that retail and wholesale consumers pay and the level of service quality that retail and wholesale consumers receive. Rate Counsel urges the Commission to seek commitments from CenturyLink to adopt "best practices" in its provision of basic local exchange service customers so that CenturyLink's pursuit of synergies does not come at the expense of those households that continue to rely on the public switched network, and also that CenturyLink adopt best practices in its provision of wholesale services so that CenturyLink's rivals (and ultimately consumers) do not suffer from deteriorated wholesale service. Furthermore, as Rate Counsel and others demonstrate in initial comments, the broadband deployment that CenturyLink promises falls far short of the vision and goals that the Commission has set forth in its National Broadband Plan.

Therefore, Rate Counsel urges the Commission to establish enforceable conditions to ensure adequate retail and wholesale service quality, and to yield the timely deployment of broadband services at the speeds and quality contemplated by the National Broadband Plan. Rate Counsel urges the Commission to adopt the conditions set forth in Rate Counsel's initial and reply comments and to consider also the additional conditions recommended by others in their initial comments. Based on its review of the Applicants'

responses to any FCC information and data requests, and to the Applicants' response to initial comments, Rate Counsel may submit supplemental analyses and recommendations.

Respectfully submitted,

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