

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter Of )  
 )  
Qwest Communications )  
International Inc., )  
 )  
and ) WC Docket No. 10-110  
 )  
CenturyTel Inc. d/b/a CenturyLink, )  
 )  
Application for Transfer of Control )  
Under Section 214 of the )  
Communications Act, As Amended )

**COMMENTS IN OPPOSITION TO THE TRANSFER OF CONTROL BASED ON THE  
CONTINUING CONSOLIDATION OF LANDLINE NETWORKS**

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## COMMENTS IN OPPOSITION TO THE TRANSFER OF CONTROL BASED ON THE CONTINUING CONSOLIDATION OF LANDLINE NETWORKS

### U.S. Supreme Court: a Prediction of a Merger's Impact upon Future Competition is Required<sup>1</sup>

On behalf of the approximately 100 million Americans still dependent on landlines, despite the extraordinary growth of mobile phones, the Mabuhay Alliance opposes the merger between CenturyTel and Qwest Communications International (“Qwest”).

On its face, the merger presents no antitrust violations. Even post-merger, their landline acquisitions will represent less than 20% of the overall land line market.<sup>2</sup> The concern expressed herein is that CenturyTel's acquisition of Qwest puts it in a position to secure, over the next five years, a close to monopolistic hold on all landline customers. This could occur as a result of the two dominate landline carriers, AT&T (46.5 million landlines), and Verizon (31.9 million landlines), selling off their landlines, often at bargain prices.<sup>3</sup> AT&T and Verizon have, in a variety of ways, announced that landlines are of little or no interest to them and may have no future in America.<sup>4</sup>

In order to determine the potential for an antitrust violation, we urge that the Department of Justice, FTC and/or the FCC engage in a full investigation and inquiry as to CenturyTel's future relating to landline ownership and the expected plans of AT&T and Verizon regarding ownership of landlines over the next five to ten years. In United States v. Philadelphia Nat'l Bank, the Supreme Court held that “a prediction of [a merger's] impact upon competitive conditions in the future” is required. 374 U.S. 321, 362 (1963).

The Mabuhay Alliance has endeavored to make a thorough and reasoned analysis of the proposed merger; in part, we attempted to secure this information by requesting it of CenturyTel's CEO, Glenn Post (letters of 4/26/10 and 6/15/10 attached) but have so far received no response. Should AT&T and Verizon commit to maintaining their present ownership level of landlines over the next ten years, we will withdraw our objections.

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<sup>1</sup> See United States v. Philadelphia Nat'l Bank, 374 U.S. 321, 362 (1963).

<sup>2</sup> de la Merced, Michael, and Wortham, Jenna. The New York Times. 22 April 2010. 7 June 2010. <<http://www.nytimes.com/2010/04/23/technology/23phone.html>>

<sup>3</sup> Sheth, Niraj, and Cheng, Roger. The Wall Street Journal. 23 April 2010. 7 June 2010 <<http://online.wsj.com/article/SB10001424052748703876404575200042559183812.html>>.

<sup>4</sup> It should be noted that the concerns herein are in conformance with the new flexible antitrust guidelines recently proposed by the Department of Justice and the Federal Trade Commission (“FTC”).

Although these objections are filed by the Mabuhay Alliance on behalf of 18.5 million Asian Americans (a disproportionate percentage of whom are dependent upon landlines, due to income, language barriers and/or limited time of residence in the United States) these objections are also applicable to all underserved communities, and, in particular, rural communities.

Although no study that we are aware of has fully examined the reasons why certain generally underserved communities maintain landlines even though they have cell phones or have access to cell phones, we believe a comprehensive study would demonstrate that landline phones are perceived of having far greater benefits than wireless for certain customer aggregates. In part, this may be due to the pricing and regulatory scheme that affects landlines and does not affect the relatively unregulated wireless system.

More information is required to properly analyze the anti-competitive effects of the proposed merger of CenturyTel and Qwest. The merger review process is a fact-specific investigation. It is exceedingly difficult for community groups and third parties who lack substantial resources to evaluate the effect of this merger based on the companies' Application for Consent to Transfer Control which they submitted to the Federal Communications Commission ("FCC") on May 10, 2010, and based on the public pronouncements of AT&T and Verizon. Specifically:

- Where they operate as the incumbent local exchange carriers ("ILEC"), CenturyTel and Qwest should provide information as to the availability of alternative landline services from competitors in each geographic region in which they operate.
- AT&T and Verizon should be further pressed to divulge their marketing plans relating to the future of landlines at their respective companies.

The proposed merger of CenturyTel and Qwest continues the trend toward consolidation of the landline industry. In this instance, the fifth-largest local telephone company in the United States, CenturyTel, is buying the third-largest, Qwest, in an effort to save more than \$600 million annually by achieving economies of scale.

CenturyTel provides approximately 7 million telephone access lines and offers high-speed internet access to over 2.2 million customers. Qwest serves approximately 10.3 million telephone access lines and has roughly 3 million broadband internet customers. The deal

immediately doubles CenturyTel's customer base and the combined company will reach across 37 states.<sup>5</sup> The proposed transaction is a parent-level transfer of control of Qwest, valued at approximately \$22.4 billion, with no change to Qwest's subsidiaries on an operational level. It is essentially a merger between firms that produce and sell the same products, and is therefore a horizontal merger.

### Discussion

This merger between CenturyTel and Qwest has the possibility of a unilateral anti-competitive effect on the landline product market. As AT&T and Verizon reduce or eliminate their landline services, CenturyLink will rapidly become one of the largest landline operators in the United States, especially in rural areas where the Company will dominate those product markets.

Pursuant to section 7 of the Clayton Act (15 U.S.C. § 18), no person shall:

acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where... the effect of such acquisition... may be substantially to lessen competition, or to tend to create a monopoly.

15 U.S.C. § 18 (2000). Two governmental organizations share the primary and concurrent responsibility for enforcing antitrust laws: the Department of Justice (DOJ) and the FTC. In addition, authority to enforce compliance with section 15 U.S.C. section 18 is vested in the FCC where “applicable to common carriers engaged in wire or radio communication or radio transmission of energy.” 15 U.S.C. § 21 (a) (2000).

Congress included section 7 in Clayton Act in order to neutralize embryonic threats to competition, and to prevent accumulations of power which are in themselves too small to enjoin under the Sherman Act. United States v. Aluminum Co. of America, 377 U.S. 271, 280 (1964). Section 7 calls for “a prediction of [a merger's] impact upon competitive conditions in the future.” United States v. Philadelphia Nat'l Bank, 374 U.S. at 362. The merger is a violation of

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<sup>5</sup> *Id.*

section 7 of the Clayton Act if there is a *reasonable probability* that competition will be harmed. Brown Shoe Co. v. United States, 370 U.S. 294, 324 (1962). Here, CenturyTel is acquiring a rural provider of landlines at a time when the two major landline providers (AT&T and Verizon) are anxious to divest their own landlines. Little imagination is required to see that a post-merger CenturyTel could easily become the dominant landline provider in rural areas in the next five years, and accordingly, the merger should be curbed in its incipiency.

The DOJ's Antitrust Division ("the Division") and the FTC jointly issued the Horizontal Merger Guidelines ("the Guidelines") on April 2, 1992, which are designed to outline the Division's standards and analytical techniques used in determining whether to oppose mergers or acquisitions with a horizontal overlap under Section 7 of the Clayton Act. While not having force of law and not being binding on courts, the Guidelines are given some consideration and have often been applied by federal courts when reviewing mergers that the Department of Justice, FTC and other enforcing agencies wish to enjoin. United States v. Hammermill Paper Co., 429 F. Supp. 1271, 1280 (W.D. Pa. 1977). The Guideline standards are considered below.

### Relevant Markets

The relevant lines of commerce in which to analyze the effects of the Merger are the sale and upkeep of landline telephone services. A determination of the relevant market is "a necessary predicate to a finding of a violation of the Clayton Act because the threatened monopoly must be one which will substantially lessen competition 'within the area of effective competition,'" and "substantiality can be determined only in terms of the market affected." Brown Shoe Co. v. United States, 370 U.S. at 324 (quoting United States v. du Pont, 353 U.S. 586, 593 (1957)).

#### A. Product Market

Landlines are the relevant product market, and there is no substitute for landline services. Products are differentiated if no "perfect" substitutes exist for the products controlled by the merging firms." United States v. Oracle, 331 F. Supp. 2d 1098, 1117 (N.D. Cal. 2004). While it is the case that many consumers choose to maintain a cell phone as their only phone, many customers require and depend on the security that a landline offers. Many consumers, from

senior citizens to small businesses, may feel more comfortable with landline services for a variety of reasons. Landlines are especially crucial in rural areas, where cell phone reception may not be perfect, and where customers may require that line for dial-up internet service. Similarly, since Voice over Internet Protocol (VoIP) services need a robust internet connection, consumers must still buy broadband services which could cost more than a traditional landline phone plan. If there should be a power outage or if a customer's broadband service goes down, phone service will cease to function. This will not occur with the use of landline services, as corded phones do not require power. Finally, 911 calls over VoIP are typically routed through a third-party, and there have been reports of calls being routed to emergency call centers in the wrong part of the country. There is no perfect substitute for landline service, and should the post-merger CenturyTel wish to increase prices, their customers may not have a competing service provider to turn to.

#### B. Geographic Market

CenturyTel and Qwest argue that since they have very little overlap with regard to the geographic markets in which they provide landlines, the proposed merger will have no anticompetitive effects. However, the fact that two merging firms have “competed directly on the horizontal level in but a fraction of the geographic markets in which either has operated, does not, in itself, place their merger outside the scope of section 7 [of the Clayton Act].” Brown Shoe Co., 370 U.S. at 337. That section “speaks of ‘any . . . section of the country,’ and if anticompetitive effects of a merger are probable in ‘any’ significant market, the merger -- at least to that extent -- is proscribed.” Id. If there are even minimal areas of overlap, this does not necessarily “immunize the merger in those markets in which competition might be adversely affected” but the minimal overlap would be considered when crafting the equitable relief. Brown Shoe Co., 370 U.S. at 337. Here, CenturyTel and Qwest do compete directly in a select few geographic regions, such as Orlando, Huntsville, Minneapolis, and Puget Sound. This minimal direct competition does not immunize the merger from scrutiny.

Furthermore, the relevant geographical market should not be limited to areas where CenturyTel and Qwest currently have operations, but should be evaluated nation-wide and in the context of the increasingly high degree of concentration in the landline market. AT&T and Verizon have publicly declared that they wish to divest their landline operations in the coming

years. As their market share of landlines decreases, the possibility of a post-merger CenturyTel becoming the largest or second largest provider of landlines becomes very probable in light of the telecommunications industry's history of consolidation.

#### C. History of Consolidation

Since the 1984 breakup of AT&T, or "Ma Bell," the telephone industry has begun a process of remonopolization. Whether an industry has a history of a tendency toward concentration is a central consideration in evaluating the potential harm to competition that could result from a merger. Brown Shoe Co., 370 U.S. at 345. Industry tendencies for further concentration "are to be curbed in their incipiency." United States v. Continental Can Co., 378 U.S. 441, 461 (1964) (quoting Brown Shoe Co., 370 U.S., at 345, 346).

#### D. Entry Conditions

The entry of a viable competitor into the relevant market is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects of the CenturyTel/Qwest merger. Under the revised Department of Justice/FTC Guidelines, the entry of a robust competitor must be sufficiently swift to prevent harm to consumers. Because of the trend toward landline divestment and the high capital requirements of entry into the telecom industry, it seems very unlikely that a viable competitor will enter the relevant geographic and product market to prevent harm to rural landline users.

### Conclusion

The successful merger of CenturyTel and Qwest will very likely lessen competition in rural markets. Accordingly, the Mabuhay Alliance urges the FTC and the Department of Justice to closely scrutinize the trends of the telecommunications industry and the current availability of landline services to rural and low income communities.

Should the merger be approved, CenturyTel and Qwest's combined landlines would represent the third largest landline operation in the US. As the two largest landline operators (AT&T and Verizon) diminish their landline business over the coming years, the

CenturyTel/Qwest network will quickly become one of the largest landline networks in the country.

While CenturyTel and Qwest do not compete extensively in the same geographic markets, they are often times the exclusive provider of landline services to rural areas. Their consolidation could leave rural customers generally with fewer alternatives, and no likely competitor to a post-merger CenturyTel. Those customers would be at the mercy of CenturyTel if it chose to raise prices or if a lack of competition-driven innovation deprived rural customers of the means of communication *vital* to economic, political, and social inclusion.

Dated: July 12, 2010

Respectfully submitted,

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/s/ Mia Martinez  
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/s/ Aaron Lewis  
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