

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

In the Matter of	)	
	)	
Applications Filed By Qwest	)	WC Docket No. 10-110
Communications International Inc. and	)	DA 10-993
CenturyTel, Inc., d/b/a CenturyLink	)	File Nos. 0004229927,
For Consent to Transfer of Control	)	0004231340, 0004231345,
	)	0004231348, 0004232216,
	)	0004236172

**COMMENTS OF AVENTURE COMMUNICATIONS TECHNOLOGY, LLC AND  
NORTHERN VALLEY COMMUNICATIONS, LLC**

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Dated: July 12, 2010

Aventure Communications Technology, LLC (“Aventure”) and Northern Valley Communications, LLC (“Northern Valley”), by and through counsel, files these Comments in response to the Public Notice<sup>1</sup> released May 28, 2010 in this docket. Aventure and Northern Valley are competitive local exchange carriers (“CLEC”) that, *inter alia*, provide interstate and intrastate exchange access service to Qwest Communications Company, LLC, (“Qwest Communications”) a subsidiary of Qwest Communications International Inc. (collectively, “Qwest”); Qwest Communications is an interexchange carrier (“IXC”) that provides long distance telephone service to residential and business customers. If the application for transfer of control is approved, Qwest Communications will be among the subsidiaries transferred to CenturyTel, Inc. d/b/a CenturyLink (“CenturyLink”).

Qwest Communications is one of a few IXCs that have generated an industry-wide controversy by refusing to pay interstate switched access to LECs, including Aventure and Northern Valley, that provide service to conference calling companies. In most instances, Qwest Communications refuses and has refused for many years to pay *any* access charges, 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. As a result of self help like Qwest’s, well over twenty-five cases have been filed in federal courts nationwide, and other cases are pending before the Federal Communications Commission and state utility commissions. If approved, the merger would likely result in further proliferation of IXC self help. Accordingly, the Commission should deny the merger or impose appropriate merger conditions preventing CenturyLink from engaging in unlawful self help.

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<sup>1</sup> *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer Control* (rel. May 28, 2010).

## I. THE COMMISSION'S STANDARD OF REVIEW.

Pursuant to sections 214(a) and 310(d) of the Communications Act, the Commission must determine whether the proposed transfer of control to CenturyLink of licenses and authorizations held by Qwest will serve the public interest, convenience, and necessity.<sup>2</sup> The Commission employs a balancing test weighing any potential public interest harms of the proposed transaction against the potential public interest benefits.<sup>3</sup> CenturyLink and Qwest will bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.<sup>4</sup>

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<sup>2</sup> See 47 U.S.C. §§ 214(a), 310(d).

<sup>3</sup> See, e.g., *Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, File Nos. 0002031766, et al., Memorandum Opinion and Order, FCC 05-148, ¶ 20 (rel. Aug. 8, 2005) (*Sprint/Nextel Order*); *Applications of Western Wireless Corporation and Alltel Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138, ¶ 17 (rel. July 19, 2005) (*Alltel/Western Wireless Order*); *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd. 21522, 21542-43, ¶ 40 (2004) (*Cingular/AT&T Wireless Order*); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd. 473, 483, ¶ 15 (2004) (*News Corp./Hughes Order*); *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee*, CC Docket 98-184, Memorandum Opinion and Order, 15 FCC Rcd. 14032, 14046, paras. 20, 22 (2002) (*Bell Atlantic/GTE Order*); *Applications of VoiceStream Wireless Corporation and Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd. 9779, 9789, ¶ 17 (2001) (*Deutsche Telekom/VoiceStream Order*).

<sup>4</sup> See, e.g., *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21542-44, ¶ 40 (citing *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to subsidiaries of Cingular Wireless LLC*, WT Docket 03-217, Memorandum Opinion and Order, 19 FCC Rcd. 2570, 2581, ¶ 24 (2004) (*Cingular/NextWave Order*); *News Corp./Hughes Order*, 19 FCC Rcd. at 483, ¶ 15; *Applications*

The Commission's public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"<sup>5</sup> which include, *inter alia*, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, and ensuring a diversity of license holdings.<sup>6</sup> The public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will

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*for Consent to the Transfer of Control of Licenses from Comcast Corporation and AT&T Corp., Transferors, to AT&T Comcast Corporation, Transferee*, MB Docket No. 02-70, Memorandum Opinion and Order, 17 FCC Rcd. 23246, 23255, ¶ 26 (2002) (*AT&T/Comcast Order*); *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd. 20559, 20574, ¶ 25 (2002) (*EchoStar/DirectTV Order*); *Bell Atlantic/GTE Order*, 15 FCC Rcd. at 14046, ¶ 22; *Applications of SBC Communications Inc. and BellSouth Corporation*, 15 FCC Rcd. 25459, 25464, ¶ 13 (*BellSouth/SBC Order*); *Applications of Vodafone Airtouch, PLC and Bell Atlantic Corporation*, File Nos. 0000032969, *et al.*, Memorandum Opinion and Order, 15 FCC Rcd. 16507, 16512, ¶ 13; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 98-178, Memorandum Opinion and Order, 14 FCC Rcd. 3160, 3169-70, ¶ 15 (1999) (*AT&T/TCI Order*).

<sup>5</sup> See *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41 (citing *News Corp./Hughes Order*, 19 FCC Rcd. at 483-84, ¶ 16; *AT&T/Comcast Order*, 17 FCC Rcd. at 23255, ¶ 27; *EchoStar/DirectTV Order*, 17 FCC Rcd. at 20575, ¶ 26; *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, to AT&T Corp., Transferee*, CS Docket No. 99-251, Memorandum Opinion and Order, 15 FCC Rcd. 9816, 9821, ¶ 11 (2000) (*AT&T/MediaOne Order*); *AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC. and TNV [Bahamas] Limited Applications for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses*, IB Docket No. 98-212, Memorandum Opinion and Order, 14 FCC Rcd. 19140, 19146-47, ¶ 14 (1999) (*AT&T/British Telecom Order*).

<sup>6</sup> See 47 U.S.C. §§ 157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996) (1996 Act), 254, 332(c)(7)); 1996 Act, Preamble; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41; *see also Cingular/NextWave Order*, 19 FCC Rcd. at 2583-84, ¶ 29.

result in the provision of new or additional services to consumers.<sup>7</sup> In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.<sup>8</sup> In determining the competitive effects of the merger, the standards governing the Commission's review differ from those of the Department of Justice, because the Commission is charged with determining whether the transfer of control serves the broader public interest.<sup>9</sup>

The Commission's public interest authority also enables it to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.<sup>10</sup> Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.<sup>11</sup> Section 214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may

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<sup>7</sup> See *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41 (citing *AT&T/Comcast Order*, 17 FCC Rcd. at 23255, ¶ 27; *AT&T/MediaOne Order*, 15 FCC Rcd. at 9821-22, ¶ 11; *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd. 18025, 18030-31, ¶ 9 (1998) (*WorldCom/MCI Order*).

<sup>8</sup> See *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41.

<sup>9</sup> See *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544-45, ¶ 42; *AT&T/Comcast Order*, 17 FCC Rcd. at 23256, ¶ 28.

<sup>10</sup> See, e.g., *Alltel/Western Wireless Order*, FCC 05-138 at ¶ 21 (conditioning approval on the divestiture of operating units in specified markets); *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21545-46, ¶ 43 (same); see also *WorldCom/MCI Order*, 13 FCC Rcd. at 18032, ¶ 10 (conditioning approval on the divestiture of MCI's Internet assets).

<sup>11</sup> 47 U.S.C. § 303(r).

require.”<sup>12</sup> Indeed, the Commission’s public interest authority enables it to impose and enforce conditions to ensure that the merger will, overall, serve the public interest.<sup>13</sup> The Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission’s responsibilities under the Communications Act and related statutes.<sup>14</sup>

## **II. QWEST ROUTINELY ENGAGES IN UNLAWFUL SELF-HELP BY REFUSING TO PAY AVENTURE AND NORTHERN VALLEY’S TARIFFED ACCESS CHARGES AND BY ENGAGING IN CALL BLOCKING AND CALL CHOKING.**

As Qwest has recognized, “[w]hen an IXC uses LEC local exchange switching facilities to originate or terminate an interstate interexchange call, that carrier *must compensate* the LEC for the provision of switched access services.”<sup>15</sup> Adventure and Northern Valley know first hand, however, that Qwest’s words and Qwest’s actions are two very different things. Qwest is one of only a few carriers that repeatedly ignore the Commission’s long-standing precedent by engaging in unlawful self help by refusing to pay for the access services it takes from Adventure and Northern Valley. Qwest seeks to excuse its non-payment by arguing that certain of the calls its customers send to Adventure and Northern Valley’s telephone numbers are terminating to conference calling

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<sup>12</sup> 47 U.S.C. § 214(c); *see also Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21545-46, ¶ 43; *Bell Atlantic/GTE Order*, 15 FCC Rcd. at 14047, ¶ 24; *AT&T/British Telecom Order*, 14 FCC Rcd. at 19148, ¶ 15.

<sup>13</sup> 47 U.S.C. § 303(r); *see, e.g., Alltel/Western Wireless Order*, FCC 05-138 at ¶ 21; *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21545-46, ¶ 43; *Bell Atlantic/GTE Order*, 15 FCC Rcd. at 14047, ¶ 24; *WorldCom/MCI Order*, 13 FCC Rcd. at 18032, ¶ 10; *FCC v. Nat’l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989).

<sup>14</sup> *See Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544-45, ¶ 43; *News Corp./Hughes Order*, 19 FCC Rcd. at 534, ¶ 131.

<sup>15</sup> Comments of Qwest Communications, WC Docket No. 09-8, at 10 (filed March 12, 2009) (emphasis added).

providers that receive service from Aventure and Northern Valley, which Qwest contends are not “customers” under the respective federal tariffs. Even if Qwest’s theory was correct, which it is not, Qwest offers no explanation for its refusal to pay access charges for other calls – calls that indisputably terminate to residential and businesses served by Aventure and Northern Valley.

The right of a CLEC, such as Aventure and Northern Valley, to collect its tariffed access charges has been settled for nearly a decade. The regulatory structure that governs CLEC access charges was established by the Commission in its 2001 *Seventh Report and Order*. In that Order, the Commission struck a compromise. It strictly regulated CLEC access rates to ensure that they were set at reasonable levels, and it deemed those tariffed rates to be conclusively reasonable, to ensure that IXCs could not refuse payment. In establishing this system, the Commission expressly noted its concerns over the IXCs’ repeated use of self-help by simply refusing to pay tariffed access charges:

Reacting to what they perceive as excessive rate levels, the major IXCs have begun to try to force CLECs to reduce their rates. The IXCs’ primary means of exerting pressure on CLEC access rates has been to refuse payment for the CLEC access services. Thus, Sprint has unilaterally recalculated and paid CLEC invoices for tariffed access charges based on what it believes constitutes a just and reasonable rate. AT&T, on the other hand, has frequently declined altogether to pay CLEC access invoices that it views as unreasonable. We see these developments as problematic for a variety of reasons. We are concerned that the IXCs appear routinely to be flouting their obligations under the tariff system. Additionally, the IXCs’ attempt to bring pressure to bear on CLECs has resulted in litigation both before the Commission and in the courts. And finally, the uncertainty of litigation has created substantial financial uncertainty for parties on both sides of the dispute.<sup>16</sup>

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<sup>16</sup> *In re Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, at 9932, ¶ 23 (rel. April 27, 2001) (citations omitted).

The Commission's position on this matter has been stated repeatedly and unequivocally: "[T]he law is clear on the right of a carrier to collect its tariffed charges, even when those charges may be in dispute between the parties..."<sup>17</sup> Particularly relevant to Aventure and Northern Valley's ongoing disputes with Qwest, the Commission has stated that:

a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations.<sup>18</sup>

The Commission has found that self-help refusals to pay access charges violate two sections of the Communications Act. Both the Commission and the courts have found that self-help constitutes a violation of Section 201(b) of the Communications Act, which prohibits "unreasonable practices."<sup>19</sup> In *MCI Telecommunications Corp.*, the Commission found that MCI's "self-help approach" violates Section 203 of the Act and "existing case law."<sup>20</sup> The Commission explained:

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<sup>17</sup> *Tel-Central of Jefferson City, Missouri, Inc. v. United Telephone of Missouri, Inc.*, 4 FCC Rcd. 8338, 8339, ¶ 9 (1989) (*Tel-Central*). See also *Communique Telecommunications, Inc. DBA Logically*, 10 FCC Rcd. 10399, 10405, ¶ 36 (1995).

<sup>18</sup> *Business WATS, Inc., v. AT&T Co.*, 7 FCC Rcd. 7942, ¶ 2 (1989), citing *MCI Telecommunications Corporation, American Telephone and Telegraph Company and the Pacific Telephone and Telegraph Company*, 62 FCC 2d 703, ¶ 6 (1976) (*MCI Telecommunications Corp.*); see also, *National Communications Ass'n. v. AT&T Co.*, No. 93 CIV. 3707, 2001 WL 99856 (S.D.N.Y. Feb. 5, 2001) (citing both cases).

<sup>19</sup> *Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc.*, 550 U.S. 45, 55 (2007); *MGC Communications, Inc. v. AT&T Corp.*, 14 FCC Rcd. 11647 (1999); *Tel-Central*, 4 FCC Rcd. 8338 (1989).

<sup>20</sup> *MCI Telecommunications Corp.*, 62 F.C.C. 2d at 705-6.

Section 203(c) of the Act specifically forbids carriers from charging or collecting different compensation than specified in an effective tariff. Tariffs which are administratively valid operate to control the rights and liabilities between the parties. Rates published in such tariffs are rates imposed by law. Withdrawal from this position would invite unlawful discrimination.<sup>21</sup>

The Commission noted that its “finding that self-help is not an acceptable remedy does not leave MCI without recourse.”<sup>22</sup> It directed MCI to Sections 206 – 209 of the Act “which set forth a complaint procedure to be used by persons who believe that a carrier is violating the Act.”<sup>23</sup>

Following the proposed merger, CenturyLink will attempt to expand the existing long-distance customer bases thereby increasing the overall percentage of calls routed to Aventure and Northern Valley for which access charges may be withheld. Allowing Qwest’s practice of engaging in self help to become more prolific will have substantial negative consequences on competition throughout the industry as small competitive carriers are forced not only into protracted legal battles, but at the same time bear the burden of reduced cash flow during the course of the litigation.

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<sup>21</sup> *MCI Telecommunications Corp.*, 62 F.C.C. 2d at 706, ¶ 6.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*; Similarly, the Commission, on its own motion, has declared that carriers such as Qwest are not at liberty to block or choke traffic directed to rural carriers, generally, or to conference calling services, specifically. See *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*, Call Blocking by Carriers, WC 07-135, 22 FCC Rcd. 11629, 11631, ¶ 5 (“Call Blocking Order”) (“we seek to alleviate any possible confusion by clarifying that carriers cannot engage in self help blocking traffic to LECs [providing service to conference call companies].”); *id.* at ¶ 6 (“Specifically, Commission precedent provides that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way.”) (citations omitted).

Self help imposes extraordinary economic burdens on small competitive carriers, such as Aventure and Northern Valley, who are forced to defend their rights while being denied revenue from carriers that continue to deliver calls to their networks. The likely result is that small competitive carriers – many of which are direct competitors in Qwest’s local exchange territories - could be effectively starved out of existence by Qwest while awaiting resolution of the disputes. The result would be an overall reduction in competition and quality of telecommunications services in many rural areas where competition is already slight and could result in a host of negative consequences for consumers nationwide.<sup>24</sup> For this reason, the merger request is not in the public interest and should be denied.

To the extent that the Commission is inclined to approve the merger, however, it is appropriate for the Commission to reset the table by imposing merger conditions directing CenturyLink to pay its access bills, rather than engaging in self help. This merger condition would not prevent CenturyLink from pressing its case, but rather help to ensure that self help activities are not expanded in a manner that would stymie competition or otherwise damage the ubiquity of the nation’s telecommunications system.<sup>25</sup>

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<sup>24</sup> See, e.g., Call Blocking Order, 22 FCC Rcd. at 11631, ¶ 5 (“The Commission has been, and remains, concerned that call blocking may degrade the reliability of the nation’s telecommunications network.”) (citations omitted).

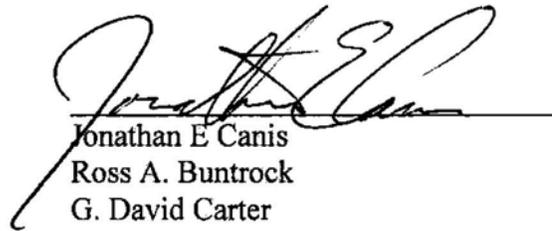
<sup>25</sup> The Commission is authorized to require merger conditions that will protective of quality of telecommunication services. See *Cingular/AT&T Wireless Order*, 19 FCC Rcd. at 21544, ¶ 41 (citations omitted).

### III. CONCLUSION

For all the foregoing reasons, the Commission should deny the applications seeking to transfer control over Qwest to CenturyLink unless the Applicants cease abusing their market power and commit to abide by the Commission's rules and regulations. To the extent that the Commission is inclined to grant the transfer of control application, it should impose a merger condition requiring Applicants to pay switched access charges unless and until it receives an order from the Commission or a court of competent jurisdiction declaring the charges are not consistent with the LEC's filed tariff.

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