Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of QWEST COMMUNICATIONS INTERATIONAL INC., Transferor and CENTURYTEL, INC. D/B/A CENTURYLINK, Transferee Application for Transfer of Control Under Section 214 of the Communication Act, as Amended	))))))))))))))))	WC Docket No. 10-110 ITC-T/C-20100510-00183 ITC-T/C-20100511-00188 ITC-T/C-20100511-00190 File No. 0004229927 File No. 0004231340 File No. 0004231345 File No. 0004231348 File No. 0004232216 File No. 0004236172 SCL-T/C-20100510-00012

REPLY COMMENTS OF NEW EDGE NETWORK, INC.

Penny H. Bewick
Vice President-External Affairs
NEW EDGE NETWORK, INC.
3000 Columbia House Blvd
Suite 106
Vancouver, WA 98661-2969
(360) 906-9775

Andrew D. Lipman
Eric J. Branfman
Philip J. Macres
BINGHAM MCCUTCHEN LLP
2020 K Street, N.W.
Washington, DC 20006
(202) 373-6000

Counsel for New Edge Network, Inc.

Date: July 27, 2010

TABLE OF CONTENTS

Page

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of QWEST COMMUNICATIONS INTERATIONAL INC., Transferor and CENTURYTEL, INC. D/B/A CENTURYLINK, Transferee Application for Transfer of Control Under Section 214 of the Communication Act, as Amended	)	WC Docket No. 10-110 ITC-T/C-20100510-00183 ITC-T/C-20100511-00188 ITC-T/C-20100511-00190 File No. 0004229927 File No. 0004231340 File No. 0004231345 File No. 0004231348 File No. 0004232216 File No. 0004236172 SCL-T/C-20100510-00012

REPLY COMMENTS OF NEW EDGE NETWORK, INC.

New Edge Network, Inc. ("New Edge"),[1] by and through its undersigned counsel, respectfully submit these reply comments in response to the Commission's May 28, 2010 Public Notice in this docket.[2] New Edge endorses the initial comments and proposed merger conditions filed by Access Point *et al.* on July 12, 2010, but wishes to amplify on the points raised therein regarding OSS. These points are based on New Edge's own experience with OSS difficulties as a result of other recent mergers. Considering this experience, in the ILEC operating territories of Qwest Communications International Inc. ("Qwest"), New Edge believes that the public interest

---

[1] New Edge Network, Inc. ("New Edge"), a wholly-owned subsidiary of EarthLink, Inc., is a competitive Local Exchange Carrier that builds and manages private IP-based wide area networks for businesses and communications carriers using a blend of available access technologies (including DSL, T1 lines, fiber-optic and wireless broadband connections).

[2] Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer of Control - Pleading Cycle Established, WC Docket No. 10-110, Public Notice, DA 10-993 (rel. May 28, 2010).

will be best served by requiring Applicants to continue to provision the Qwest Operation Support System ("OSS") and associated Application Interface ("API") ("Qwest OSS/API") for its wholesale broadband service offerings. Moreover, the public interest demands that Qwest's wholesale service offerings, including stand-alone DSL, be made available at reasonable rates and terms.

INTRODUCTION AND SUMMARY

Pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended ("Communications Act"),[3] the Commission must determine whether the proposed transfer of control of certain licenses and authorizations currently held and controlled by Qwest and CenturyTel, Inc., dba CenturyLink ("CenturyLink") will serve the public interest. In making this assessment, the Commission must find that the public interest benefits outweigh any potential public interest harms and that approval of the transaction will bolster competition and consumer welfare rather than diminish it over time after the transaction is consummated.[4] In order for the proposed transaction to rise to this standard, several conditions to the transaction must be imposed to ensure that all customers currently served by Applicants – including wholesale customers – would not be harmed as a result of the transfer.

Specifically, the transfer will only serve the public interest if the Commission ensures that broadband service deployment will not suffer. As such, the Commission should impose the following conditions upon its grant of the proposed transaction: (1) Applicants must be required

[3] *See* 47 U.S.C. §§ 214(a), 310(d).

[4] *See, e.g., Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket 05-75, Memorandum Opinion and Order, 20 FCC Rcd. 18433, ¶ 16 (2005) ("*Verizon/MCI Merger Order*"); *Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc.*, WC Docket No. 07-22, Memorandum Opinion and Order, 23 FCC Rcd. 514, ¶ 11 (2008); *Applications Filed for the Transfer of Control of Embarq corporation to CenturyTel, Inc.*, WC Dkt. 08-238, Memorandum Opinion and Order, 24 FCC Rcd. 8741, FCC 09-54 (rel. Jun. 25, 2009) ("*Embarq/CenturyTel Merger Order*").

to adopt the Qwest OSS/API for services to wholesale customers on a permanent basis to ensure that existing customers will not be harmed and competitive broadband deployment can continue to expand in these areas after the merger. Such a requirement would be subject to an exception that a superior OSS and API may be adopted so long as there is a reasonable implementation process and timeframe established. (2) Applicants must continue to offer wholesale broadband services to customers in these areas, including stand-alone wholesale broadband services on the same – or better – prices, terms and conditions that Applicants currently make available. To ensure the transaction will serve the public interest, the FCC should also commit to review the OSS and API functions for wholesale broadband services no less than annually for three years after the proposed transaction is consummated. Moreover, to ensure the public interest continues to be served by the transaction, the FCC should stand prepared to revisit the requirements, and impose additional requirements, if necessary.

DISCUSSION

Wholesale broadband services, especially as they serve homes and businesses in rural areas, are an essential component to increasing broadband deployment and uptake throughout the United States. Notably, New Edge has operated as a successful provider of wholesale broadband services, offering customers a single source for high-speed connectivity. Unfortunately, at the same time, the lack of adequate, fully functional and real-time OSS and APIs, and the absence of wholesale broadband service offerings at reasonable rates and terms especially from mid-sized and rural incumbent carriers, has been a gating impediment to bringing even more consumers broadband services. Without continued access to fully functioning OSS and APIs, as well as wholesale inputs in the Applicants' territories, New Edge and other competitive broadband services providers will be unable to serve customers adequately and assist in deploying more broadband across the U.S.[5] Indeed, the proposed transaction will have an impact upon more than

[5] *See, e.g.,* American Recovery and Investment Act of 2009, Pub. L. No. 111-5, 123 Stat.
(Footnote Continued on Next Page.)

17 million access lines (*i.e.*, customers), many of which are in predominately rural and smaller city service areas.[6] Thus, unless the Commission ensures that the transaction will not diminish competitive broadband service options, such as those offered to consumers and businesses by New Edge and others, the proposed transaction could result in increased harm to a large pool of customers using and seeking a broadband alternative.

I. APPLICANTS SHOULD BE REQUIRED TO UTILIZE THE QWEST OSS/API, AT LEAST IN PRESENT QWEST TERRITORY.

The OSS offered by Qwest for wholesale broadband services is a fully functional system providing real-time, electronic access to pre-qualification, ordering, order status and trouble ticketing. In fact, the Qwest OSS/API offers New Edge access to stand-alone DSL ordering information, further increasing consumer broadband options throughout Qwest territory. As part of the Section 271 process, Qwest's OSS passed independent third-party testing. The same is not true of CenturyLink's OSS, which is known as EASE. Unlike Qwest's OSS, EASE does not provide real-time trouble ticketing or status availability. In addition, a fully functional API has not been made available to New Edge for access to further functionality. As discussed at length in the July 12, 2010 comments of Access Point *et al.*, the Application makes no disclosure or commitment regarding the OSS that Applicants would use after the merger. New Edge therefore discussed this issue informally with CenturyLink representatives, who said that no decision had been made, but that if the merged company were to utilize a single OSS, it would most likely be EASE, rather than Qwest's OSS. Based on problems with conversions of OSS in the three most recent mergers--FairPoint/Verizon, CenturyTel/Embarq, and Frontier/Verizon, two of which

---

(Footnote Continued from Previous Page.)

115 (2009) (Congress charged the FCC with creating a national broadband plan by February 17, 2010 to ensure all people in the United States have access to broadband and establish benchmarks for meeting that goal); *In the Matter of A National Broadband Plan for Our Future*, Notice of Inquiry¸ 24 FCC Rcd 4342, ¶ 5 (Apr. 8, 2009) ("*NBP NOI*") ("Our goal must be for every American Citizen and every American business to have access to robust broadband services").

[6] Application at pp. 3-4, 19-21.

involved conversions to EASE--it is completely predictable that if Qwest's OSS is replaced by CenturyLink's EASE OSS, problems will arise, to the detriment of CLECs and their customers.

This dire prediction is based on the problematic first hand experiences New Edge has faced as a result other recent mergers approved by the FCC. For instance, over the past year, integration issues in the Verizon/FairPoint transfer have resulted in well-publicized customer problems related to OSS.[7] As a result of FairPoint's poor OSS, in 2009, New Edge removed FairPoint from the New Edge pre-qualification data base. In other words, as the result of problems with the FairPoint OSS, FairPoint's lack of internal processes and the horrendous service New Edge has received from FairPoint, New Edge is no longer able to offer to new customers any services in the FairPoint region previously well-served by Verizon.

The CenturyTel/Embarq merger has also resulted in serious operational problems for New Edge in the conversion to Embarq's EASE system--the same system to which CenturyLink has advised it may convert Qwest. The EASE system was slow, to the point of timing out when New Edge personnel tried to enter orders or obtain status. After issues appeared to be resolved, they would recur. CenturyLink struggled for weeks trying to find the cause of the problem and to implement a long term solution. It is New Edge's understanding that the problems were related to the ability of the EASE system to handle the increased flow of orders that resulted from the CenturyTel/Embarq merger. Moreover, CenturyLink had no proactive training for CLECs on the new system. Training was provided only after the new system was implemented and as New Edge personnel struggled to place orders or enter trouble tickets..

Most recently, New Edge continues to experience serious OSS problems in connection

[7] *See*, *e.g.*, Clarke Canfield, Daily Press, *Maine, New Hampshire and Vermont to Hold Joint Conference with FairPoint Executives* (Sept. 7, 2009) *available at* http://www.dailypress.com/sns-ap-us-fairpoint-hearing,0,3867911.story (*quoting* Anne Ross, general counsel for the New Hampshire Public Utilities Commission: "This level of service and operational and financial problems is unprecedented, at least in the last 20 years, especially in a company of this size. It's not unusual to have problems in smaller companies, but for a company with this size network and customer base, it's unusual to see problems of this magnitude").

with the Frontier/Verizon transaction, particularly in West Virginia, the one state in which there was a complete change in OSS. Moreover, the change was to Frontier's EASE system, the same system used by CenturyLink. These problems included being informed by Frontier that 17 New Edge retail customers were to be moved to a particular central office in the newly acquired Frontier territory. Frontier provided a string of incorrect information related to the migration right through the evening the migration was to complete. The most critical error made by Frontier was the discovery that there were no T-1 facilities in the central office to which Frontier directed New Edge to cut over the lines of these 17 customers. The cutover would have resulted in all of the New Edge customers being out of service. The conversion was to take place at midnight on June 30, 2010, and at 11:55 PM, New Edge personnel were finally able to get Frontier to abort the cutover that would have put the 17 customers out of service at midnight. The problem recurred on July 16, 2010, with Frontier rushing to cut these same New Edge customers over to the new central office while Frontier's own personnel struggled to get an order to flow thru its EASE system because of a lack of training and lack of process developed and implemented for Frontier's own personnel. New Edge's West Virginia customers remain on their original facilities today while Frontier continues to try and get the order to flow thru its EASE system.

Throughout the month of July, 2010, New Edge has been plagued with OSS problems in the Frontier West Virginia service centers, and to a lesser extent, in the other Frontier service centers serving the former Verizon region. Long hold times at the Frontier service centers have tied up New Edge technical personnel, thereby adversely affecting New Edge customers served by Frontier and by others. Once New Edge technical personnel were able to speak to Frontier personnel, they were transferred from queue to queue because Frontier personnel did not know how to work the systems. Furthermore, because Frontier's Netways system for trouble tickets was overloaded, the system would time out before New Edge personnel could even enter a trouble ticket. When they did, there were inordinate delays (often in the range of 5-7 days) in getting Frontier repair personnel dispatched to the customer's location. Because Frontier does not have an escalation process that works, this problem still exists. In fact, New Edge was recently informed by a Frontier repair supervisor that Frontier is not currently working on trouble tickets because it is too busy building switches.

Just this last week, New Edge had three customer sites go down, once again in West Virginia. The long hold times and inability of Frontier personnel plagued New Edge all week in their attempts to restore service to these customers. At this writing, those three customers remain out of service with no firm commitment from Frontier as to when the service will be restored. New Edge is desperately looking at alternatives for those customers until Frontier can find the personnel with the training to resolve the issues.

To avoid a repeat of the FairPoint/Verizon, CenturyTel/Embarq, and Frontier/Verizon debacles and to ensure that the comparatively better practices and capabilities in place at Qwest are not replaced with worse OSS practices and capabilities, the FCC must require Applicants to continue, during the duration of the merger conditions, to utilize the Qwest OSS, including the API, without additional charge to wholesale broadband customers in current Qwest territory. Qwest's OSS has been found by independent third party testing to comply with the requirements of Section 271, and those continuing requirements will not disappear simply because the Qwest Bell Operating Companies ("BOCs") will have a new parent company. Converting from Qwest's 271-compliant OSS to CenturyLink's EASE, which has not been found to be 271-compliant, would raise serious questions about the Qwest BOCs' compliance with Section 271.

Applicants' vague assurances that "[t]he transaction will not disrupt any existing service arrangement" and "will not cause any reduction, impairment, to discontinuance of service to any customer,"[8] are not sufficient to ensure customers do not suffer a decrease in quality of services. These same assurances were made by Frontier, but reality has shown a very different outcome. Today, with Qwest, wholesale broadband providers can order easily, report trouble efficiently

[8] Application at p. 37.

and compete effectively using the Qwest API. Indeed, New Edge has built-out APIs to Qwest and has a seamless pre-qualification and ordering process. The same is not true of CenturyLink.

As discussed above, New Edge continues to experience serious operational problems in the conversion to EASE, both at Frontier and at CenturyLink. Moreover, CenturyLink does not currently offer a fully functional API to which CLECs can build out. Thus, conversion to the current CenturyLink system is almost certain to be a significant step-down from the Qwest systems, which would effectively result in a decrease of service to customers (and potential customers) in the numerous states currently served by Qwest and affected by this transaction: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. With so many customers potentially impacted negatively by this transaction, unless the FCC steps in and requires as a condition of this merger that Applicants maintain the Qwest OSS/API systems in current Qwest's ILEC territories to which both wholesale broadband service providers and customers of these providers are accustomed, the public interest will be disserved.

Indeed, if this happens or a superior OSS or API without cost to customers and with a reasonable implementation process and timeframe is not implemented, competitors in the current Qwest region will be forced to incur substantial costs to interface with the Applicants' system, including development of new electronic interfaces for establishing wholesale connections with Qwest. Wholesale providers would also incur additional expenses associated with training employees to use a new OSS and API. Prior to implementing a new OSS or API as a result of the merger, Applicants should be required to provide such training to employees of wholesale customers, at Applicants' expense. The FCC must also ensure that competitors are not required to pay for Applicants' implementation of new OSS or API by incurring new charges or increased charges of any kind.

This is not to say that Applicants should not strive to adopt an even better OSS than that currently provided by Qwest. New Edge hopes that the newly combined company, as the largest provider of communications in rural areas, will set the standard for the best system that other, smaller rural companies can follow. The FCC should learn from the past. The *Embarq/CenturyTel Order* recognized the negative impact on competition that antiquated OSS can have. CenturyTel's OSS was determined to be "largely manual with little if any automated or interactive capabilities" and unable to "provide as rapid and efficient processing as the Embarq system."[9] As a result, the merging entities adopted the automated OSS of Embarq, which while far inferior to Qwest's OSS, is far superior to CenturyTel's. The same should be done here: Qwest has the better, more efficient OSS and has built an API usable by wholesale providers, including New Edge, and, thus, as a condition to this proposed transaction, CenturyLink must maintain Qwest's OSS, at least in Qwest's ILEC operating territories.[10]

II. APPLICANTS SHOULD BE REQUIRED TO CONTINUE TO OFFER WHOLESALE BROADBAND ACCESS SERVICES ON PRICES, TERMS, AND CONDITIONS AT LEAST EQUAL TO THOSE OFFERED BY QWEST.

While Applicants claim that "existing wholesale arrangements will remain intact" and "customers will continue to receive service from the same operating company at the same rates and on the same terms and conditions immediately after the merger as immediately prior to the transaction,"[11] this commitment is fleeting. It lasts only until "immediately after the merger," which could be as little as one day. More is needed. New Edge endorses the proposed conditions advocated by Access Point *et al.* in their July 12, 2010 filing.

Moreover, as the FCC has emphasized throughout the National Broadband Plan

---

[9] *Embarq/CenturyTel Merger Order*, at ¶¶ 20-23.

[10] Should the Commission not wish to impose this condition, as a much less preferable approach, New Edge submits that it should prohibit Applicants from changing the OSS/API currently in use in Qwest territory unless they: (1) provide independent third party testing similar to what was provided as part of the 271 process; (2) first agree with the CLEC community to a transition period; (3) agree with the CLEC community to a "burn-in" period in which the current and the new OSS are simultaneously available; (4) agree to provide training of CLEC personnel in the use of the new OSS at Applicants' expense; and (5) agree to the deployment of additional Applicant personnel to address the problems that will inevitably arise as a result of the changeover.

[11] Application at p. 37.

proceeding in setting its goal "for every American citizen and every American business to have access to robust broadband services,"[12] broadband brings consumers the capability to access a wide range of resources, services, and products. Notably, stand-alone DSL services also serve an important role in broadband deployment and uptake, especially as more consumers cut their landlines. Indeed, at this time, Qwest offers stand-alone DSL to wholesale providers at rates that make it commercially feasible to offer consumers a competitive alternative to broadband service. Without a commitment from Applicants to offer the same– or better – prices, terms and conditions as offered by Qwest on a going-forward basis, millions of customers may lose the alternative that exists today and others will be denied this important pro-competitive broadband alternative.

In the Bell Atlantic/GTE and SBC/AT&T mergers, the Commission rejected arguments by Qwest, among others, that consumers would be worse off without the merger, noting, among other things, that it took "comfort from the Applicants' voluntary commitment to offer stand-alone DSL."[13] The merger conditions thus required the applicants to offer end users ADSL without requiring that they purchase circuit switched voice grade telephone service.[14] Similar conditions should be required here, with the wholesale offering priced no higher than the retail price in a state for ADSL service that is separately purchased by customers who also subscribe to Qwest/CenturyLink local telephone service.[15] For the foregoing reasons, New Edge proposes the following condition:

---

[12] *NBP NOI*, at ¶ 5.

[13] *Verizon/MCI Merger Order*, at ¶ 105; *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290, at ¶ 104 (2005) ("*SBC/AT&T Merger Order*").

[14] *Verizon/MCI Merger Order*, at Appendix G, p. 130; *SBC/AT&T Merger Order*, at Appendix F, p. 1224;

[15] *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, at Appendix F, pp. 153-54¶ 202 (2007) ("*AT&T/BellSouth Merger Order*").

- Applicants shall deploy and offer within the Qwest/CenturyLink ILEC territories ADSL service to ADSL-capable customers without requiring such customers to also purchase circuit switched voice grade telephone service. [16]

- Applicants shall make available in Qwest/CenturyLink's ILEC territories an ADSL service capable of speeds up to 768 Kbps to ADSL-capable customers at a rate of no more than $19.95 a month (exclusive of regulatory fees and taxes) without requiring such customers to also purchase circuit switched voice grade telephone service. [17]

Further, to the extent that any current agreements must be modified as a result of this transaction, the Applicants should be required to bear the cost of the modifications and any related filings. The FCC must also preclude Applicants from exploiting any opportunities created by the proposed transaction to raise competitors' costs under existing agreements and to continue to offer new agreements under the Qwest cost structure.

III. THE FCC SHOULD COMMIT TO REVIEWING THE IMPACT OF THE PROPOSED TRANSACTIONS ON WHOLESALE BROADBAND SERVICES TO ENSURE IT CONTINUES TO SERVE THE PUBLIC INTEREST.

Adopting the OSS, API and wholesale input requirements as conditions to the proposed transaction will go a long way to ensuring the affected 17 million access lines will continue to be served by, and have access to, the same competitive broadband alternatives that exist today. In addition to these conditions, however, the FCC must establish a process to ensure that post-consummation of the proposed transaction, the public interest continues to be served and commit to no less than annual reviews of the proposed transaction for at least three years.[18]

Moreover, the FCC should put in place an easy-to-use system that will allow both retail and wholesale customers to submit information regarding the transition, or any complaints of violations of conditions. For example, if wholesale broadband customers twelve months post-

[16] *See AT&T/BellSouth Merger Order*, at Appendix F, p. 153.

[17] *See id.*

[18] *See AT&T/BellSouth Merger Order*, at Appendix F: Conditions; *Verizon/MCI Merger Order*, at Appendix G: Conditions; *SBC/Ameritech Merger Order*, at App. F: Conditions (imposing merger conditions and review for three years).

consummation find they are unable to pre-qualify customers efficiently or are generally refused wholesale broadband services, the FCC should commit to timely review of such complaints and revisit the conditions imposed on the transaction if necessary.

CONCLUSION

For the foregoing reasons, New Edge urges the FCC to require Applicants, as a condition to the assignment or transfer of control, to (1) maintain the OSS and API equivalent or better to the current systems Qwest offers in those regions and (2) offer stand-alone DSL to wholesale broadband service providers on reasonable terms and rates. The FCC should also commit to reviewing such conditions, and the proposed transaction's impact on consumers and competition, after consummation of the proposed transaction. In addition, the FCC should adopt the conditions proposed in the initial comments filed by Access Point *et al.* on July 12, 2010.

Respectfully submitted,

__/s/ *Eric J Branfman*______
Andrew D. Lipman
Eric J. Branfman
Philip J. Macres
BINGHAM MCCUTCHEN LLP
2020 K Street, N.W.
Washington, DC 20006
(202) 373-6000

Counsel for New Edge Network, Inc.

Penny H. Bewick
Vice President-External Affairs
NEW EDGE NETWORK, INC.
3000 Columbia House Blvd
Suite 106
Vancouver, WA 98661-2969
(360) 906-9775

Date: July 27, 2010