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July 27, 2010

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JUL 27 2010

Federal Communications Commission  
Office of the Secretary

**VIA HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: *In the Matter of Qwest Communications International Inc. and CenturyTel, Inc.  
d/b/a CenturyLink Application for Transfer of Control, WC Docket No. 10-110*

Dear Ms. Dortch:

Enclosed on behalf of CenturyLink, Inc. ("CenturyLink") and Qwest Communications International Inc. ("Qwest") are an original and four (4) copies of the redacted version of the reply comments being filed in the above-referenced proceeding. Please note that we are filing a confidential version of these reply comments under separate cover pursuant to Protective Order, DA 10-994, released May 28, 2010.

Please contact the undersigned if you have any questions regarding this submission.

Respectfully Submitted,



Karen Brinkmann  
Alexander Maltas

*Outside Counsel for CenturyLink, Inc.*

Enclosures

cc: Alex Johns, Competition Policy Division, Wireline Competition Bureau  
Jeff Tobias, Mobility Division, Wireless Telecommunications Bureau  
David Krech, Policy Division, International Bureau  
Jim Bird, Office of General Counsel

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

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In the Matter of )  
)  
Applications Filed by Qwest Communications ) WC Docket No. 10-110  
International Inc. and CenturyTel, Inc. )  
d/b/a CenturyLink for Consent to )  
Transfer of Control )

**REPLY COMMENTS OF CENTURYLINK, INC. AND  
QWEST COMMUNICATIONS INTERNATIONAL INC.**

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## EXECUTIVE SUMMARY

As demonstrated in the Application, the proposed combination of CenturyLink and Qwest – two mid-size telecommunications companies – will serve the public interest. The combined company will have a nationwide platform with increased financial resources that will enable it to better compete with other larger facilities-based broadband and video providers such as AT&T, Verizon, and Comcast. The combined company's national footprint and healthy financial position will facilitate accelerated investment in broadband deployment throughout its service territory. The combined company also will be able to leverage the existing strengths of CenturyLink and Qwest to increase the variety and quality of services available to customers. For example, CenturyLink will be able to capitalize on its investments in and experience with Internet Protocol television to extend new competitive video offerings in former Qwest markets. In addition, the combination will create scope and scale advantages that will benefit customers. Finally, the transaction is expected to create significant operating synergies of approximately \$575 million, as well as approximately \$50 million in capital expenditure synergies within the first two years after close.

There will be no offsetting harms to competition or consumers. The companies' footprints are almost entirely complementary, and the overlaps and adjacencies are minimal. The Department of Justice thoroughly analyzed the competitive effects of the proposed merger, and granted early termination of the waiting period. The Commission is not limited by the Department of Justice's analysis, but the early termination is at a minimum highly persuasive evidence that the transaction will not harm competition.

No one filed a petition to deny the transaction, and none of the comments calls into serious question the public interest benefits of the transaction. Nor do the comments undermine

the conclusion that the merger will not harm competition or consumers. Instead, the vast majority of the comments are notable for having no connection whatsoever to this merger. Some commenters request industry-wide policy changes that are under consideration in other, ongoing Commission proceedings. Others raise objections based on individualized business disputes that pre-date the merger and are in all events governed by contract or by generally applicable state or federal law. Many commenters propose a grab-bag of conditions that are so far afield of this merger that they hardly merit reply; certainly none presents concerns with any genuine connection to this transaction.

The commenters' speculative concerns about CenturyLink's ability to integrate Qwest lack any basis in fact based on the company's track record of successfully integrating numerous acquisitions, including more than one million access lines and all of Embarq. The wholesale concerns raised by the competitors of both companies are at best misleading. Both CenturyLink and Qwest provide outstanding retail and wholesale service, and will continue to do so post merger. Ultimately, the commenters do not raise any legitimate objections and do not undermine the record evidence that this transaction is strongly in the public interest. The Commission should move promptly to grant the Application and allow the company to move forward in making investments and serving their retail and wholesale customers.

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**Before the  
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In the Matter of	)	
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Applications Filed by Qwest Communications	)	WC Docket No. 10-110
International Inc. and CenturyTel, Inc.	)	
d/b/a CenturyLink for Consent to	)	
Transfer of Control	)	

**REPLY COMMENTS OF CENTURYLINK, INC. AND  
QWEST COMMUNICATIONS INTERNATIONAL INC.**

In their Application,<sup>1</sup> CenturyLink, Inc. (“CenturyLink”)<sup>2</sup> and Qwest Communications International Inc. (“Qwest”) demonstrated that this proposed merger will result in significant public interest benefits, and no competitive harms. The Federal Trade Commission and Department of Justice recently agreed with the latter point, granting early termination of the waiting period under the Hart-Scott-Rodino Act.<sup>3</sup>

Notably, no party has petitioned to deny the Application. Fewer than twenty comments were filed, and not one of those undercuts the clear and extensive record evidence that the proposed merger will strongly advance the public interest. By the same token, the comments can point to no merger-related harm that would justify the laundry list of burdensome conditions that

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<sup>1</sup> References to “the Application” in these reply comments refer to the domestic Section 214 Application captioned *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*, WC Docket No. 10-110 (filed May 10, 2010).

<sup>2</sup> As noted in the Application, CenturyTel, Inc. formally changed its name to CenturyLink, Inc. on May 20, 2010 upon a vote of its shareholders.

<sup>3</sup> See <http://www.ftc.gov/bc/earlyterm/2010/07/et100715.pdf>.

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many commenters propose. Indeed, the great majority of the comments are striking for their complete lack of relevance to this merger. Most complain about general market conditions, pre-existing disputes that will not be affected by this merger, and a variety of industry-wide and other issues that have no place in this proceeding. As CenturyLink and Qwest show in these reply comments, the Commission should promptly approve the proposed transfer of control and allow the companies to merge and begin providing advanced broadband services and competition for the benefit of customers throughout their regions.

**I. THE PROPOSED MERGER IS STRONGLY IN THE PUBLIC INTEREST**

This transaction offers clear public interest benefits, and the comments raise no legitimate arguments to the contrary. As explained in the Application, this transaction combines two midsize communications companies that already are strong service providers in their respective markets, and the increased scale and scope of the combined company will greatly enhance its ability to compete across the full range of services that consumers demand today. The transaction, which is expected to create significant operating synergies of approximately \$575 million and capital expenditure synergies of \$50 million, will create a stronger, more financially sound company, with a national platform, and more diverse service offerings that will bring substantial benefits to the public.<sup>4</sup>

**A. The Transaction Will Facilitate the Deployment of Broadband and Advanced Services and Create a Stronger Competitor to the Existing Market Leaders**

First, the combined company's national footprint and healthy financial position will support the deployment of broadband and accelerated availability of advanced services throughout the expanded territory. Both companies have a demonstrated commitment to bringing broadband to their customers, and CenturyLink has gained valuable experience in

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<sup>4</sup> See Application at 21.

recent years as it has achieved substantial satisfaction of its existing broadband build-out commitments in connection with its recent acquisition of Embarq.<sup>5</sup> That experience, coupled with the combined company's financial strength and expanded scope and scale, will enable the post-merger company to continue to enhance and expand broadband deployment in Qwest's legacy service area, particularly in rural and other underserved communities, and to continue deploying innovative broadband products and services throughout the combined company's service area.

Some commenters question whether the merger actually will result in more broadband deployment.<sup>6</sup> But those challenges are meritless. Each company's track record and commitment to broadband deployment are well documented. As established in the Application, both CenturyLink and Qwest have made extraordinary investments to achieve widespread broadband capability in their regions, and have made incremental investments to achieve greater availability of higher speeds.<sup>7</sup> There can be little question that a more financially stable company can improve upon each company's performance to date in this area, and it will be in the combined company's interest to do so in order to stay competitive in the face of legacy wireline erosion.<sup>8</sup>

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<sup>5</sup> See Declaration of William E. Cheek in Support of Reply Comments of CenturyLink, Inc. and Qwest communications International Inc., ¶ 5 (attached as Exhibit 1) ("Cheek Declaration").

<sup>6</sup> See, e.g., Joint CLEC Commenters Comments at 32-33; Communications Workers of America Comments at 13.

<sup>7</sup> See Application at 13.

<sup>8</sup> See ADTRAN Comments at 3-4.

Moreover, the deployment of Internet Protocol television (“IPTV”), as discussed below, will create additional incentives to build out broadband, as the Commission has recognized.<sup>9</sup>

Second, the combined company will be able to leverage the existing strengths of CenturyLink and Qwest to increase the variety and quality of services available to consumers. For example, CenturyLink will be able to capitalize on its IPTV investments and experience to extend new competitive video offerings in Qwest markets. CenturyLink already has made significant progress deploying video in multiple markets, and as market conditions justify additional expansion, the combined company plans to extend its video offerings into Qwest markets – something Qwest was not prepared to do on its own given financial and technological challenges.<sup>10</sup> The company also will be able to leverage Qwest’s more extensive enterprise service expertise to offer new and enhanced business services in CenturyLink markets.<sup>11</sup>

A handful of commenters seek to minimize the benefits arising from IPTV deployment because that deployment is not yet mature and because they question the companies’ commitment to additional deployment.<sup>12</sup> But CenturyLink now has a valuable advantage because it has overcome substantial barriers to entry into the video marketplace, which will give the combined company a substantial head-start for further deployment.<sup>13</sup> CenturyLink has, for example, forged necessary agreements with content providers, secured intellectual property licenses, developed a viable business and distribution model, secured contracts for technology

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<sup>9</sup> See *Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, 25 FCC Rcd 746 ¶ 36 & n.141 (2010) (recognizing link between IPTV deployment and broadband deployment).

<sup>10</sup> See Application at 15-18.

<sup>11</sup> See Application at 18-19.

<sup>12</sup> See, e.g., Cbeyond et al. Comments at 67-68; Communications Workers of America Comments at 14-15; Joint CLEC Commenters Comments at 37.

<sup>13</sup> See Application at 15.

and equipment, trained employees, and conducted trials. There is no reason to doubt that the companies will seek to capitalize on that investment. CenturyLink already has made significant progress in deploying IPTV on a commercial basis in several additional markets, and will continue to do so. CenturyLink's progress to date has allowed it to gain much needed experience for future buildouts.

Third, the combination will create a stronger competitor to much larger market leaders, including AT&T, Verizon, and Comcast. On the enterprise front, reinforcement of Qwest's capabilities will enhance the choices that enterprise customers enjoy today by making the combined company an even stronger and more credible competitor, to the benefit of existing customers and the marketplace generally.<sup>14</sup> On the residential front, the merged company's introduction of IPTV stands to offer customers not only a new choice on the video services front, but also a new triple play option. And more generally, the savings the merged company will enjoy will make it a more efficient, stable, and nimble competitor in all realms, to the benefit of all its customers.<sup>15</sup> The transaction therefore will advance competition, which is a clear public interest benefit that the Commission has repeatedly recognized in past mergers.<sup>16</sup>

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<sup>14</sup> The Joint CLECs attempt to manufacture a competitive overlap in the enterprise market. *See* Joint CLEC Comments at 20. But the Application established that (1) this market is highly competitive with highly sophisticated customers, and (2) CenturyLink and Qwest have focused on different segments of the market and have different strengths. *See* Application at 18-19. The Joint CLEC Commenters' passing concern thus lacks merit and is consistent with the facts.

<sup>15</sup> *See* Application at 19, 21.

<sup>16</sup> *See, e.g., Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, WT Docket 04-70, Memorandum Opinion and Order, 19 FCC Rcd 21522 ¶ 42 (2004) ("*Cingular/AT&T Wireless Order*"); *Applications 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 ¶ 28 (2002) ("*AT&T/Comcast Order*").

## **B. The Companies Have Complementary Footprints With Minimal Overlaps and Adjacencies**

The comments notably ignore the fact that CenturyLink's and Qwest's footprints are complementary, with extremely minimal overlaps and adjacencies. In many areas, the combined footprints would connect rural and urban areas, and link long-haul networks that will enable better deployment of advanced services to more customers.<sup>17</sup> As the Commission has recognized, joining complementary networks can give rise to significant economies of scope and scale, lead to cost reductions, permit the combined company to offer a wider range of services to more customers, result in improvements in performance and reliability arising from network integration, and provide the combined company a broadened customer base that will increase its incentives to invest in innovative products and services.<sup>18</sup> All of these benefits should accrue from this transaction.

The few adjacencies and overlaps are miniscule, and are in areas characterized by robust competition. Thus, they do not provide a ground to deny the Application.<sup>19</sup> While the Joint CLEC Commenters suggest that the overlap between the two companies is somehow larger and

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<sup>17</sup> See Application at 14-15.

<sup>18</sup> *AT&T, Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662 ¶¶ 214-15 (2007) (“*AT&T/BellSouth Order*”); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290 ¶ 191 (2005).

<sup>19</sup> *Joint Applications of Global Crossing Ltd., and Citizens Communications Company for Authority To Transfer Control of Corporations Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 20, 22, 63, 78, 90, and 101 of the Commission's Rules*, Memorandum Opinion and Order, 16 FCC Rcd 8507 ¶ 7 (2001) (“*Citizens/Frontier Order*”); *Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd. for Authority to Transfer Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 22, 63 and 90 of the Commission's Rules*, Memorandum Opinion and Order, 16 FCC Rcd 15293 ¶¶ 8-9 (2001) (“*TDS/Chorus Order*”).

more problematic than reflected in the Application,<sup>20</sup> their suggestions are groundless. The Department of Justice thoroughly examined the overlaps, and found no competitive concerns in granting early termination of the waiting period. While the Commission's review is not limited by the Justice Department's analysis, the early termination is, at a minimum, highly persuasive evidence that the instant transaction will not harm competition.

**C. The Transaction Will Create Increased Scale and Scope that Will Benefit Consumers**

Significant benefits also will accrue from the combined companies' increased scale and scope.<sup>21</sup> In these difficult economic times, the resulting cost savings will be a significant advantage that will facilitate the combined company's ability to build out and improve its network and better compete with other major facilities-based broadband providers.<sup>22</sup> The transaction also will combine CenturyLink and Qwest's complementary long-haul fiber networks and each party's core metropolitan rings, facilitating more efficient deployment of broadband services to more customers by reducing middle mile and backbone costs.<sup>23</sup> By enabling the combined company to leverage economies of scale and scope and broaden its customer base, the

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<sup>20</sup> See, e.g., Joint CLEC Commenters Comments at 13-14.

<sup>21</sup> *In re Applications of Nextel Communications, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13967 ¶ 140 (2005) (“*Sprint/Nextel Order*”) (recognizing the “merger specific efficiencies in information technology, billing, customer care, sales and marketing systems”).

<sup>22</sup> See, e.g., ADTRAN Comments at 4 (“scale and scope economies will allow the combined company to operate more effectively and efficiently ... [and] will also be able to compete more effectively against the other video and broadband service providers now operating in their regions”).

<sup>23</sup> See Application at 14-15.

merged entity will have the incentive and ability to develop and deploy innovative products and services for consumers, especially in the rural areas served by CenturyLink and Qwest.<sup>24</sup>

**D. The Merger Will Facilitate The Combined Company's Continued Commitment to Rural Communities**

CenturyLink has made extensive investments to reach rural communities, and has earned a reputation for being dedicated to providing high-quality services to rural customers through a locally-focused approach.<sup>25</sup> And, with the acquisition and integration of Embarq, CenturyLink has demonstrated it can maintain that commitment and also excel at serving much larger markets, such as Las Vegas. The transaction will help bring this same locally-focused approach to rural customers in Qwest's legacy region. Further, by combining two leading fiber backbone networks, this merger will place more rural communities within economically feasible reach of that network. This will enable the combined companies to more rapidly deploy advanced broadband capabilities to rural customers in both CenturyLink and Qwest communities.<sup>26</sup> This merger thus will enable the combined company to continue its commitment to rural populations while rolling out innovative products and services to all customers.<sup>27</sup>

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<sup>24</sup> Commenter Mabuhay Alliance concedes that "on its face, the merger presents no antitrust violations," Mabuhay Alliance Comments at 2, but it is worried because this transaction may be the beginning of future consolidation. *Id.* at 3-6. Regarding this particular combination, however, Mabuhay presents no real objection, and Mabuhay's guesswork about distant future effects arising from future unannounced transactions is not a basis for denying customers the benefits of this combination.

<sup>25</sup> See original Declaration of K. Puckett, ¶ 2, (Exhibit 6 to Application).

<sup>26</sup> See Application at 13-15.

<sup>27</sup> Cox and Charter purport to question CenturyLink's extensive and proud history of serving rural communities. Their comments simply reflect their desire that CenturyLink cease receiving universal service support. Cox/Charter claim, for example, that CenturyLink should no longer be treated as a rural company, Cox/Charter Comments at 16-22, but rural status is established by statute and by Commission rules, not manufactured by CenturyLink or by any other entity. Cox/Charter also complain that CenturyLink receives extensive USF support. *Id.* at 17. CenturyLink receives USF

In short, the transaction will bring much-needed stability to the incumbent local exchange carrier (“ILEC”) sector, enhance competition in the communications industry, and it will better position the combined company to serve its customers and adapt to evolving market demand.<sup>28</sup> In all of these ways, the transaction will be good for competition, good for rural communities, good for mass market customers, good for enterprise customers, good for video customers, and good for advancing the Commission’s broadband deployment goals.

## II. COMMENTERS’ CONCERNS ABOUT INTEGRATION ARE MISPLACED

Some commenters question the companies’ ability to deliver any public interest benefits based on concerns about CenturyLink’s ability to integrate another telecommunications company on the heels of its integration of the Embarq companies.<sup>29</sup> Those concerns are misplaced and are not supported by anything more than conjecture. CenturyLink has a proven track record of successful integrations, and the integration of Embarq is on track, with the majority of the integration already done in a manner that far exceeds the progress and timelines recently undertaken by other carriers in recent transactions. Further, the integration of Qwest will largely involve the use of existing systems rather than creating new ones. Those features of this merger

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support because it serves some of the highest cost and least dense markets in the country – many of which Charter and Cox refuse to serve. *See* Comments of CenturyLink, *Connect America Fund; A National Broadband Plan for Our Future; High-Cost Universal Service Support*, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 05-337, at 47-48 (filed July 12, 2010) (comparing rural areas served by CenturyLink versus cable operators and demonstrating that cable operators, unlike CenturyLink, serve only the population center and not the outlying customers). Moreover, CenturyLink and Qwest are subject to carrier of last resort obligations, while Cox and Charter are not. CenturyLink’s commitment to rural customers thus is a tremendous benefit of this transaction, not a detriment.

<sup>28</sup> *See* ADTRAN, Inc. Comments at 2.

<sup>29</sup> New Jersey Division of Rate Counsel (“NJ DRC”) Comments at 15-16, 21-25; Cbeyond et al. Comments at 26-32.

distinguish it from prior transactions in which merging companies experienced significant integration difficulties.

**A. CenturyLink Has a Lengthy History of Successful Integrations**

The comments ignore CenturyLink’s extensive history of successful integration of acquired telecommunications companies – focusing solely on the fact that the Embarq merger is, in their view, too recent to make another successful merger possible. But the commenters provide no basis for their estimation of CenturyLink’s ability to manage and assess the challenges of integration. In fact, CenturyLink has engaged in successful transactions going back over 15 years, including, among others, its successful acquisition of Pacific Telecom, Inc. that doubled the size of the company, acquisitions of more than one million access lines from GTE and Verizon, and key fiber network acquisitions from Digital Teleport, Inc., Level 3, KMC Telecom Holdings, and Madison River Communications.<sup>30</sup> That real-world experience puts CenturyLink in a far better position to assess the risks and challenges ahead than the commenters – and based on CenturyLink’s highly successful integration of Embarq to date, the company is confident that the concerns that have been raised are entirely illegitimate.

CenturyLink in recent years has completed significant upgrades to its billing, wholesale, financial, and human resources systems in order to successfully accommodate its growth and future growth opportunities. Indeed, to date much of the systems integration that CenturyLink planned as part of its integration of Embarq has been completed on or ahead of schedule.<sup>31</sup> CenturyLink is on track to comply with all of the commitments it made to the Commission in connection with the Embarq merger. In addition, the process of transitioning legacy CenturyTel

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<sup>30</sup> See Declaration of Karen A. Puckett in Support of Reply Comments of CenturyLink, Inc. and Qwest Communications International Inc., ¶¶ 2-6 (attached as Exhibit 2).

<sup>31</sup> See “Status of CenturyLink/Embarq Merger Broadband Commitments” (attached at Exhibit 3).

customers to Embarq's operations support systems ("OSS") is underway, and is scheduled to be completed as planned by the end of the third quarter of this year. The comments cite little if any evidence of actual problems arising from any of these systems conversions.<sup>32</sup> Cbeyond et al. make oblique references to integration concerns that arise in connection with the Hawaiian Telcom or FairPoint transactions,<sup>33</sup> but those comments entirely miss their mark. CenturyLink did not take part in those transactions and, as discussed further below, the instant transaction will not involve the creation of new OSS systems as occurred in those transactions. CenturyLink has not experienced any of the major problems reported by those entities in recent systems conversions.

The Embarq acquisition, given its significant size and complexity, is a good example of CenturyLink's abilities and experience. Many aspects of the integration are entirely complete, and the remainder are progressing in a timely manner. CenturyLink is converting and integrating front-office and back-office systems onto common platforms, while broadband deployment has continued and broadband speeds have increased.<sup>34</sup> CenturyLink committed to have all CenturyLink customers using a single common platform for wholesale ordering by October,

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<sup>32</sup> The Joint CLEC Commenters' Exhibit A, which purports to note some problems with CenturyLink systems, is misleading in several respects. Most notably, many of the issues that the Joint CLEC Commenters identify are incorrect or have been resolved. Thus, many of the issues noted in Exhibit A are false: for example, CenturyLink does support both batch and real time processing, CenturyLink's provisioning intervals are not dependent on the volume of orders submitted, and CenturyLink's processes and procedures are available to all customers and are published on its website. CenturyLink will not dignify every single inaccuracy with a specific response, but it suffices to say that nearly everything stated about CenturyLink in the Joint CLEC Commenters' Exhibit A is false or misleading. *Cf.* Cheek Declaration, ¶¶ 8-11.

<sup>33</sup> *See, e.g.*, Cbeyond et al. Comments at 22-23;

<sup>34</sup> *See* Cheek Declaration, ¶ 3; *see also* Exhibit 3; "Embarq Integration Milestones" (attached as Exhibit 4).

2010, and CenturyLink is on track to meet that commitment.<sup>35</sup> Industry analysts have praised CenturyLink's progress in integrating Embarq.<sup>36</sup> Thus, the facts refute suggestions by NJ DRC and others that CenturyLink might be unable to fulfill the Embarq conditions.<sup>37</sup> CenturyLink's actual integration performance to date should satisfy any integration concerns that the Commission might have regarding the proposed transaction with Qwest.

**B. Speculation About Future Integration Problems Are Unfounded**

NASUCA makes a passing suggestion that the integration of Qwest on top of the Embarq integration may strain the company's resources to an untenable degree,<sup>38</sup> but that too is pure conjecture. CenturyLink obviously has assessed the costs of integration in deciding to proceed with this transaction, and CenturyLink's management will be appropriately focused on successful integration. CenturyLink's own evaluation is far more reliable than the groundless and speculative allegations by commenters. There is consequently no reason to expect that the integration of Qwest will not go smoothly, particularly because the companies will not need to incur the costs of creating or introducing any new systems, but rather are using a highly disciplined process to convert systems as necessary for smooth integration.<sup>39</sup>

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<sup>35</sup> See Cheek Declaration, ¶ 4; *see also* "CenturyLink's Wholesale Federal Commitments Status" (attached as Exhibit 5).

<sup>36</sup> See Reuters, "CenturyTel, Qwest Results Impress Ahead of Merger," (May 5, 2010), *available at* <http://www.reuters.com/article/idCNN0512457820100505?rpc=44> (quoting Hudson Square Research analyst as stating, "It's a good sign that the Embarq integration is going well for CenturyTel, which should give investors confidence of their ability to integrate Qwest.")

<sup>37</sup> NJ DRC Comments at 28; *see also* Cbeyond et al. Comments at 28-29; Cox/Charter Comments at 15.

<sup>38</sup> NASUCA Comments at 2-3; *see also* Communications Workers of America Comments at 10-11; NJ DRC Comments at 16.

<sup>39</sup> See Cheek Declaration, ¶ 6.

Cbeyond et al.'s musing that integration risks could arise from the combined company's financial conditions is similarly speculative.<sup>40</sup> This all-stock transaction requires no cash, no additional debt, and no financing or refinancing conditions. The combined company will have ample resources to invest in its network and ensure successful integration. The notion that unstated, non-specific financial issues might arise and might impair CenturyLink's integration of Qwest is mere conjecture.

Some parties suggest that CenturyLink's request for a temporary waiver of the one-day simple porting interval raise concerns about the company's ability to manage integration.<sup>41</sup> That is nonsense. The purpose of CenturyLink's waiver petition was merely to avoid the unnecessary expense and delay of modifying systems twice (*i.e.*, legacy Embarq and CenturyTel systems) instead of once (after the completed integration of Embarq OSS into CenturyLink's target state back-office systems).<sup>42</sup> Even with the requested waiver, CenturyLink will meet the porting interval obligations within a matter of months.<sup>43</sup> It plainly made little sense to convert both Embarq's and CenturyTel's legacy systems when CenturyLink was already planning to unify its porting capability under a unified CenturyLink system within a reasonable interval, and CenturyLink always intended seek an appropriate waiver as soon as the Commission's rules were released, which it has now done. The waiver petition thus makes eminent sense, reduces unnecessary expenditures, facilitates more rapid systems integration and improved service to

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<sup>40</sup> Cbeyond et al. Comments at 45-47.

<sup>41</sup> See NJ DRC Comments at 16; COMPTTEL Comments at 13; Leap Wireless Comments at 2-3; Cbeyond et al. Comments at 26-28.

<sup>42</sup> See CenturyLink Petition for Waiver of Deadline, *In the Matter of Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability*, WC Docket No. 07-244, *et al.* (filed June 7, 2010).

<sup>43</sup> See Cheek Declaration, ¶ 13.

wholesale and retail customers, and in no way suggests that CenturyLink's successful ongoing integration of Embarq is straining the company.

Some commenters also question whether post-merger CenturyLink will be able to meet a variety of obligations under Sections 251 and 271, but those concerns likewise have no foundation. It goes without saying, and the applicants have assured their competitive local exchange carrier ("CLEC") customers, that all rights that CLECs enjoy under Sections 251 or 271 will be unaffected by the merger, and the combined company intends to meet all of its legal obligations. Indeed, because the nature of this transaction is a stock acquisition, there will be no need to make any changes to interconnection agreements; the parties to the agreements will remain the same, and no changes in terms are necessary. And though CenturyLink previously has not operated subject to the requirements of Section 271, it is fully aware of (and has acknowledged) its duty to do so within Qwest's in-region service areas, and the company will ensure that the resources and expertise required to meet those obligations are in place. Arguments to the contrary have no basis in fact, rest strictly on speculation, and do not justify rejecting or conditioning this transaction.

### **III. THE PROPOSED MERGER WILL NOT HARM COMPETITION**

The merger will create no harm to competition. There are no meaningful overlaps or adjacencies, and consequently no meaningful risk of harm to competition for local exchange or special access services. As explained in the Application, in the 37 states in which the combined companies operate, the areas of actual overlap are truly minimal, and there are ample additional competitors in each area.<sup>44</sup> The Department of Justice reviewed those overlaps, and found no issues.

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<sup>44</sup> See Application at 24-25.

The transaction will not adversely affect the intensely competitive market for Internet backbone competition and, because there is no overlap, will not harm competition for retail broadband services. And in the case of video and the triple play of video, voice, and broadband, the transaction will introduce new competition. Further, the transaction will strengthen competition in the communications marketplace generally by better enabling the combined company to compete against much larger competitors such as AT&T and Verizon, major cable companies such as Comcast, Time Warner Cable, and Cox, and scores of well-entrenched and sophisticated CLECs and wireless service providers.

The comments do not significantly challenge any of the foregoing. Instead, most of the commenters offer only broad objections that may fairly be reduced to nothing more than an argument that “big” is bad. They challenge the merger nearly exclusively on the generic basis that the merged company will be bigger than either company individually, and alleging that the combined company will therefore have a greater incentive to discriminate against CLEC competitors. Most of these commenters’ arguments would apply literally to any merger, and do not present arguments specific to this transaction. In any event, the concerns are unfounded.

**A. Commenters’ Incantation of the “Big Footprint” Theory Does Not Present Any Legitimate Basis to Fear Discrimination Against Competitors**

Several commenters invoke an objection based on the so-called “big footprint” theory.<sup>45</sup> The comments do little more than broadly outline the argument that a combination of two LECs might, in theory, increase the combined entity’s incentives to discriminate against competitors, and then the commenters postulate that such harms might occur here. The “big footprint” objections would apply equally to any merger of LECs, many of which have been previously

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<sup>45</sup> See, e.g., COMPTTEL Comments at 3-4; Cox/Charter Comments at 7; Joint CLEC Commenters at 30-32; Broadvox Comments at 6-7; Cbeyond et al. Comments at 49-53; Infotelecom Comments at 4-5.

granted without conditions. The Commission should reject these “big footprint” arguments here, as well, for several reasons.

Although the Commission has recognized that the “big footprint” theory may have some validity *purely as a matter of theory*, it has repeatedly rejected attempts to hold up even much larger LEC mergers based on this theory in the absence of any evidence of actual harms.<sup>46</sup> Here, the objections are striking for their lack of evidence and reliance on utter speculation about any supposed harms. Cbeyond et al., for example, repeatedly talk about the “risk of discriminatory conduct” and repeatedly assert that discrimination is “likely,”<sup>47</sup> without citing a single concrete example of how the combined company operating in more markets, many of which are rural, would increase the merged company’s incentives to discriminate any more than each applicant would have now. This is particularly true because Qwest already is an inter-exchange carrier and a CLEC and an ILEC today, so it already has any incentives to act in an anticompetitive manner that might theoretically arise from playing those multiple roles. Here, just as in AT&T/BellSouth, “commenters present no rigorous theoretical model that generates even a rough estimate of the merger’s incremental impact on [the merging parties’] incentive to discriminate.”<sup>48</sup>

Indeed, it is notable that CLECs have invoked the “big footprint” theory in multiple recent merger proceedings, but they have never provided any empirical evidence that such mergers resulted in increased post-merger discrimination, despite lack of conditions targeting such potential conduct. tw telecom presents a tepid argument that BellSouth’s overall wholesale

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<sup>46</sup> See, e.g., *AT&T/BellSouth Order*, ¶¶ 184-185.

<sup>47</sup> Cbeyond, et al. Comments at 52-53.

<sup>48</sup> *AT&T/BellSouth Order*, ¶ 185.

performance, in tw telecom’s view, has deteriorated since its merger with AT&T.<sup>49</sup> But that allegation, even if true, does not remotely establish discrimination by AT&T/BellSouth, or that the merger itself caused any discrimination. And, of course, it says nothing meaningful at all about the future performance of either CenturyLink or Qwest.

Moreover, the speculative harms asserted by the commenters are especially unlikely in this merger given the complementary nature of the applicants’ networks. In all events, the combined company will be far from the largest provider, and will face significant ongoing competition from much larger providers such as AT&T, Verizon, and Comcast,<sup>50</sup> as well as other established cable companies such as Time Warner Cable and Cox, and wireless providers, including not only AT&T and Verizon but also Sprint, T-Mobile and others. The Commission recognized in its *CenturyTel/Embarq* order that the “big footprint” arguments did not present the same concerns as earlier mergers because post-merger CenturyTel “will still be smaller than AT&T or SBC or Verizon was.”<sup>51</sup> That is also the case with this transaction.

Finally, the combined company will face significant scrutiny of its compliance with its regulatory obligations, not only from state regulators and the Commission, but also from many CLECs, cable companies, voice over Internet Protocol (“VoIP”) providers, and wireless carriers that now are its fierce competitors. (Indeed, CenturyLink and Qwest each have experienced

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<sup>49</sup> Cbeyond et al. Comments at 58-60.

<sup>50</sup> By way of example, recent 10-K and 10-Q filings reveal the following comparisons. For revenues, AT&T had \$123 billion, Verizon \$107.8 billion, and Comcast \$35.6 billion. By contrast, CenturyLink had \$5 billion and Qwest \$12.3 billion. AT&T and Verizon also had 48 million and 31.9 million access lines respectively, compared to 6.9 million for CenturyLink and 9.7 million for Qwest. With respect to Internet customers, AT&T has 17.5 million, Verizon 9.3 million, and Comcast 23.5 million, compared to 2.3 million for CenturyLink and 2.8 million for Qwest.

<sup>51</sup> *Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8741 ¶ 30 and n.106 (2009) (“*CenturyTel/Embarq Order*”).

significant line loss from wireless competition, and wireless connections now far exceed wireline connections in all states where CenturyLink and Qwest operate.)<sup>52</sup> The presence of such significant intermodal and intramodal facilities-based competitors, as well as numerous cable companies and CLECs, including those represented in the comments in this proceeding, makes implausible the suggestion that any scheme of discrimination could succeed because the robustly competitive marketplace will police and immediately expose any discriminatory behavior. The applicants will be no more able to foreclose competition or discriminate as a combined entity than either company individually is today.<sup>53</sup>

**B. The Loss of a Benchmark Is Trivial and Will Not Diminish the Commission's or States' Ability to Regulate**

Several CLECs bemoan the loss of a “benchmark,” which they claim may mean that the combined company’s hypothetical future discriminatory practices could go undetected.<sup>54</sup> They rely heavily on the Commission’s order in *SBC/Ameritech* in which the Commission expressed the view that benchmarking could be useful to detect discrimination.<sup>55</sup> What the commenters ignore is that the Commission has completely repudiated that same argument in other mergers, and it should do so again here. The Commission expressly found in *AT&T/BellSouth* that benchmarking is not as “useful or important a regulatory tool,” and that “the performance of other companies is not germane to the question of whether the performance of the company

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<sup>52</sup> *Local Telephone Competition: Status as of December 31, 2008*, Industry Analysis and Technology Division, Wireline Competition Bureau, June 2010, Tables 8 and 17.

<sup>53</sup> This is even more true in this transaction than in recent other BOC mergers because Qwest provides very little long-distance service in CenturyLink markets, and CenturyLink provides almost none in Qwest markets.

<sup>54</sup> *See, e.g.*, Cbeyond et al. Comments at 61-66, Joint CLEC Commenters Comments at 23-29.

<sup>55</sup> *Id.* (each citing *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer of Control*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14737 (1999) (“*SBC/Ameritech Order*”)).

under scrutiny is improving, deteriorating, or staying the same.”<sup>56</sup> The Commission correctly noted that benchmarks were unnecessary because each company’s individual performance was subject to monitoring, and that a local exchange carrier’s own performance over time is the best way to evaluate allegedly discriminatory practices.<sup>57</sup>

Likewise, this merger will not impair the Commission’s ability to evaluate how the combined company treats CLECs. To the extent that benchmarks are relevant in a specific case, there will remain plenty of competitors as options. In any event, there can be no serious argument that the loss of a “benchmark” is an independent justification for holding up a merger. No company has an obligation to remain independent in order to serve as a benchmark for another company.

#### **IV. THE MERGED COMPANY WILL NOT REDUCE WHOLESALE SERVICE QUALITY OR AVAILABILITY**

Both CenturyLink and Qwest take very seriously their wholesale provisioning obligations and opportunities. Serving their wholesale customers is important to each company, and is crucial to the future of the combined company. To the extent that there are legitimate disputes over the quality or availability of wholesale service, the applicants will continue to work with wholesale customers to expeditiously resolve them. However, the allegations raised in the comments either exaggerate past problems, or reflect genuine, good-faith disputes over what the law requires that are being addressed before state public utility commissions or through other proceedings. None presents a basis to reject or condition this merger.

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<sup>56</sup> *AT&T/BellSouth Order*, ¶ 189.

<sup>57</sup> *Id.*