

September 27, 2010

VIA ECFS

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Applications Filed By Qwest Communications International Inc. And CenturyTel, Inc., d/b/a CenturyLink For Consent To Transfer Of Control, WC Dkt. No. 10-110*

Dear Ms. Dortch:

Integra Telecom, Inc. (“Integra”) and tw telecom inc. (“tw telecom”), through their undersigned counsel, hereby submit this response to the Applicants’ recent criticisms¹ of Integra and tw telecom’s Proposed Information Requests in the above-referenced proceeding.² As explained below, none of the Applicants’ criticisms has merit.

First, the Applicants suggest that in previous merger review proceedings, the Commission has not gathered detailed information about the “ordinary-course business decisions of the merging parties.”³ This is not true. In the recent Frontier-Verizon merger review proceeding, for example, the Wireline Competition Bureau sought very detailed information about the applicants’ business decisions as they pertained to the proposed transaction. The Bureau requested, among other things, (1) documents related to any “business-to-business point of contact calls’ between the parties regarding

¹ See generally Letter from Karen Brinkmann, Counsel for CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-110 (filed Sept. 22, 2010) (“Applicants’ Letter”).

² See generally Letter from Thomas Jones, Counsel for Integra Telecom, Inc. and tw telecom inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-110 (filed Sept. 17, 2010) (attaching “Proposed Information Requests”).

³ Applicants’ Letter at 1; see also *id.* (“The Commission historically has left these types of day-to-day management considerations to the companies . . .”).

the OSS conversion/cutover processes”;⁴ (2) documentation on the “plans or efforts” Frontier has made “to ensure that, post-closing, it will have sufficient[ly] trained staff to operate, maintain, and support the OSS that Frontier will need to serve all of its customers”;⁵ and (3) a description of “*each step* Frontier will take to achieve [the projected] synergies”⁶ resulting from the proposed transaction.

Moreover, while the Applicants contend that it is inappropriate for the Commission to request information on “what advice outside consultants are providing to the companies during the merger process,”⁷ the Bureau’s information request in the Frontier-Verizon merger review proceeding sought *exactly that type of information*. For instance, the Bureau sought copies of documents prepared either internally or “by outside advisors” regarding “the development and refining” of Frontier’s “long-term plans for post-merger OSS.”⁸

Second, the Applicants argue that the ongoing state commission proceedings to review the proposed transaction render a thorough review by the Commission unnecessary.⁹ This argument is flawed in several respects. To begin with, the Commission has a duty under the Act to determine whether a proposed transfer of control is in the public interest¹⁰ regardless of the existence of parallel state commission review proceedings. Furthermore, a number of the states affected by the proposed

⁴ Letter from Sharon Gillett, Chief, Wireline Competition Bureau, to Kenneth F. Mason, Vice President – Government and Regulatory Affairs, Frontier Communications Corporation, and Karen Zacharia, Vice President, Verizon, WC Dkt. No. 09-95, Attachment, Information and Document Request, at 3 (dated Feb. 12, 2010) (“Frontier-Verizon Information Request”) (Request III.A.1.c.).

⁵ *Id.* at 4 (Request III.A.6.).

⁶ *Id.* at 7 (Request III.D.20.a.(1)) (emphasis added).

⁷ Applicants’ Letter at 1.

⁸ *See* Frontier-Verizon Information Request, at 4 (Request III.A.5.); *see also id.* at 3 (Requests III.A.1.b. & III.A.1.c.) (requesting documents prepared either internally or “by outside advisors” regarding the Applicants’ OSS cutover planning for West Virginia); *id.* (Requests III.A.2.a. & III.A.2.b.) (requesting documents prepared either internally or “by outside advisors” regarding “the development of the formal process governing the West Virginia [OSS] conversion” and “refinements or revisions” to the “formal conversion process”); *id.* at 4 (Request III.A.3.d.) (requesting documents prepared either internally or “by outside advisors” regarding the Applicants’ plans for OSS testing prior to the cutover in the 13 legacy GTE territories).

⁹ *See* Applicants’ Letter at 1 (asserting that “the suggested information requests are wholly unnecessary because the issues they address are already subject to extensive and granular review in multiple state proceedings”).

¹⁰ *See* 47 U.S.C. §§ 214(a), 310(d).

transaction do not require prior regulatory approval¹¹ and have undertaken no review of the transaction at all. Of the ten jurisdictions that have already cleared the proposed transaction, most did not conduct any meaningful review of the transaction.¹² The Commission must therefore conduct its own review to ensure that the proposed transaction does not result in harm to competition and consumer welfare in any of the affected states, but especially those states that will not or cannot conduct their own comprehensive review.

Third, the Applicants suggest that the Commission cannot issue the Proposed Information Requests because some of the requests “seek information that is confidential.”¹³ This is nonsense. Nothing precludes the Commission from requesting information that may be confidential from applicants in merger review proceedings. Indeed, because the Commission already expressly “anticipate[d] that it may seek and receive additional documents in this proceeding from the Applicants . . . that contain proprietary or confidential information,” the Bureau adopted a *Protective Order* in this proceeding to ensure that such information is “afforded adequate protection.”¹⁴

¹¹ The proposed transaction affects residential and business customers in 37 states. *See Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a/ CenturyLink for Consent to Transfer of Control*, Public Notice, 25 FCC Rcd. 5957, nn.3 & 5 (rel. May 28, 2010). According to the Applicants, however, only 22 states require regulatory approval. *See Letter from Karen Brinkmann, Counsel for CenturyLink, Inc., to Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 10-110, at 1* (filed Sept. 16, 2010).

¹² *See, e.g., CenturyLink-Qwest Approval Report Card, available at <http://www.centurylinkqwestmerger.com/index.php?page=regulatory-information>* (last visited Sept. 27, 2010) (indicating that on June 14, 2010, “[t]he California Public Utilities Commission issued a Certificate approving the Advice Letter filed notifying the Commission of the acquisition of Qwest by CenturyLink”); *id.* (indicating that on July 28, 2010, “[t]he Georgia Public Service Commission closed the approval docket and thus the transfer of control of Qwest to CenturyLink cleared regulatory review”); Letter from Richard A. Beverly, General Counsel, Public Service Commission of the District of Columbia, to Yaron Dori, Counsel, Qwest Communications International, Inc., D.C. PSC Formal Case No. 892 (dated Aug. 30, 2010) (ruling that “no Commission action on the Joint Petition is necessary”); Decision and Order, Hawaii PUC Dkt. No. 2010-0110, at 1 (adopted June 15, 2010) (issuing a one-sentence order “waiv[ing] all regulatory requirements related to the proposed transaction”); Letter from Terry J. Romine, Executive Secretary, Maryland Public Service Commission, to Linda Gardner, CenturyLink, Inc. et al., Maryland PSC Letter Order #123575 (dated July 7, 2010) (issuing a two-sentence letter order “approv[ing] the transaction”); Case Action Form, Ohio PUC Dkt. No. 10-717-TP-ACO (effective June 29, 2010) (automatically closing the merger docket).

¹³ Applicants’ Letter at 1.

¹⁴ *See In re Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink Application for Transfer of Control Under Section 214 of the Communications Act, as Amended*, Protective Order, 25 FCC Rcd. 5963, ¶ 2 (rel. May 28, 2010) (“*Protective Order*”) (emphasis added).

Fourth, it is worth emphasizing that CenturyLink's statement that it "has been systematically planning the necessary integration of facilities, personnel, and processes"¹⁵ for the proposed transaction only underscores the need for the Commission to issue the Proposed Information Requests, particularly given that CenturyLink will consolidate OSS¹⁶ and may do so within just one year of closing.¹⁷ While the planning process may be in the early stages, it has begun in earnest. Indeed, if CenturyLink is following its past practices, such planning may well have progressed significantly. For example, CenturyTel announced its acquisition of Embarq in October 2008,¹⁸ and five months later, in March 2009, CenturyTel had made specific "decisions concerning systems and processes," including the selection of a "billing and customer care system," an "accounting system," and "a CLEC order entry system" (i.e., EASE), for the merged company.¹⁹ It has been five months since CenturyLink announced its proposed acquisition of Qwest.²⁰ It is therefore entirely possible that CenturyLink has selected some systems for the Merged Company. The FCC cannot undertake a complete review of the proposed transaction unless and until it knows exactly what the Applicants have done so far and what they plan to do in the future with regard to systems integration.

¹⁵ Applicants' Letter at 1.

¹⁶ See CenturyLink's Responses to Arizona Corporation Commission Staff's Seventh Set of Data Requests to CenturyLink, ACC Docket Nos. T-01051B-10-0194 et al., at 9 (dated Aug. 13, 2010) (response to Arizona Corporation Commission Staff Data Request 7.15 by Mark Harper, Director of Regulatory Operations and Policy for CenturyLink) (stating that "CenturyLink anticipates improved wholesale customer service over time through the consolidation of OSS and billing systems and sales and account management teams").

¹⁷ See Reply Comments of CenturyLink, Inc. and Qwest Communications International Inc., WC Dkt. No. 10-110, at 20 (filed July 27, 2010).

¹⁸ See Press Release, CenturyTel, Inc., "CenturyTel and Embarq Agree To Merge," available at http://www.centurytel embarq merger.com/pdf/pressreleases/CenturyTel_EMBARQ_Announcement_Release.pdf (dated Oct. 27, 2008).

¹⁹ See Rebuttal Testimony of G. Clay Bailey on Behalf of CenturyTel, Inc., Washington UTC Docket No. UT-082119, at 21-22 (filed Mar. 18, 2009).

²⁰ See Press Release, CenturyLink, "CenturyLink and Qwest Agree to Merge," available at <http://news.centurylink.com/index.php?s=43&item=31> (dated Apr. 22, 2010).

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Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Nirali Patel

Counsel for Integra Telecom, Inc. and tw telecom inc.

cc (via email): Nick Alexander
Jean Ann Collins
Bill Dever
Alex Johns
Pamela Megna
Carol Simpson
Don Stockdale
Matt Warner
Jim Bird
Neil Dellar
Virginia Metallo