



October 20, 2010

BY ELECTRONIC FILING

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **EX PARTE** — WC Docket No. 10-110

Dear Ms. Dortch:

This *ex parte* written communication is submitted on behalf of T-Mobile USA, Inc. (“T-Mobile”) with respect to the proposed acquisition of Qwest Communications International, Inc. (“Qwest”) by CenturyTel, Inc. d/b/a CenturyLink (“CenturyLink”). T-Mobile does not oppose the proposed acquisition, but believes that certain conditions must be imposed in order to ensure that the transaction does not adversely affect T-Mobile’s operations or its ability to offer service to its customers.

CenturyTel’s acquisition of Qwest will create the third largest incumbent local exchange carrier (“ILEC”) in the country, with over 17 million access lines and operating territory in 37 states. By comparison, Frontier, the next largest ILEC, comes in at a distant fourth place with just over 6 million access lines.¹ T-Mobile generally supports the comments submitted by a number of competitive wireless and wireline providers that have raised concerns about the impact the merger might have with regard to the merged entities’ ability to engage in anticompetitive behavior.² As noted by Cox Communications and Charter Communications, Inc., the merged entity will have greatly enhanced market power, which in turn places competing service providers at risk of discriminatory behavior, particularly during the process of negotiating (and renegotiating) critical interconnection agreements (“ICAs”).³ The Commission

¹ Frontier Communications Corporation, SEC Form 10-Q, filed Aug. 5, 2010, at 22. The nation’s two largest ILECs, Verizon and AT&T, have approximately 31 million and 27 million access lines, respectively. Verizon Investor Quarterly, 2Q 2010, July 23, 2010, at 14; AT&T Investor Briefing. 1st Quarter 2010, April 21, 2010, at 17.

² Pursuant to the Commission’s Public Notice, Comments and Petitions to Deny were filed on July 12, 2007, and Replies and Oppositions were filed on July 27, 2010. *Public Notice*, DA 10-993, rel. May 28, 2010.

³ Comments of Cox Communications and Charter Communications, Inc., WC Docket No. 10-110 (July 12, 2010) (“Cox/Charter Comments”) at 4.

has explicitly recognized this risk and imposed conditions on a number of other ILEC mergers designed to reduce the delay and transaction costs ILECs can impose during the interconnection agreement process.⁴

Building on the conditions adopted in other mergers and on their experience with those conditions, other competitive providers have requested that the Commission impose similar conditions on the CenturyLink/Qwest merger. T-Mobile supports a number of these conditions, including those that would: (i) permit the extension of existing interconnection agreements, (ii) allow competing carriers to “port” existing agreements from one state to another, and consolidate those agreements, (iii) prohibit CenturyLink from continuing to avail itself of rural exemptions after the merger, and (iv) reduce switched access rates.

Interconnection Related Conditions:

Extending Existing Interconnection Agreements

T-Mobile is a party to several ICAs with Qwest. Although the initial term on most of these agreements has expired, they continue to operate on an “evergreen” basis, automatically renewing each month. The continuing operation of these agreements after several years is testament to the fact that both Qwest and T-Mobile are satisfied with these agreements and the terms and conditions contained therein. At present, there is no need to renegotiate these agreements, and it is expected that these agreements shall continue to operate in their current form.

The merger between CenturyLink and Qwest, however, puts these existing agreements in jeopardy. Unless the Commission adopts a specific condition extending the term of existing ICAs, T-Mobile and other competing wireless and wireline service providers are at risk of the merged entities requiring them to negotiate new ICAs. Requiring T-Mobile and other similarly situated carriers to renegotiate these agreements as a result of the merger would be unduly burdensome and would constitute an unnecessary cost. As discussed by Leap Wireless International, Inc.,⁵ renegotiating—and potentially re-arbitrating—new ICAs would be expensive and time consuming for all parties involved.

⁴ *BellSouth Corporation and AT&T Inc. Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission’s Rules for Consent to the Transfer of Control of BellSouth Corporation to AT&T Inc.*, 22 FCC Rcd 5662, Appendix F at 5809-5810 (2007) (“AT&T/BellSouth Merger Order”); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶¶ 373-376, 389 (1999).

⁵ Comments of Leap Wireless International, filed July 12, 2010 (“Leap Comments”) at 5.

The FCC has previously conditioned mergers involving other ILECs on allowing requesting telecommunications carriers to extend their existing interconnection agreements for a period of up to three years.⁶ The Commission should adopt a similar exemption here.

“Porting” and Consolidation of Interconnection Agreements

Today T-Mobile has a number of ICAs in place with CenturyTel, Qwest and Embarq, many of which have varying rates, terms and conditions. For example in just one state, Washington, T-Mobile has the following reciprocal compensation rates with the companies to be merged:

	End Office	Tandem
CenturyTel	\$0.018	\$0.008652
Embarq	\$0.004663	\$0.001995
Qwest	\$0.0007	\$0.0007

And in some states, there may be more than one agreement per entity.⁷ Managing multiple ICAs—both across different states and within the same state—is costly, inefficient and burdensome.

One of the reasons CenturyLink and Qwest urge the Commission to approve the transaction is so that they might profit from certain economies of scale.⁸ If the merged entities are able to avail themselves of these benefits, competitors should be able to share in these benefits too. As Sprint notes: “Merger conditions that reduce transaction costs share synergy benefits with the rest of the industry and provide a broader public interest benefit to the industry as a whole.”⁹ T-Mobile submits that there are several ways this can be addressed. The first is to require CenturyLink to allow its carrier customers to “port” existing interconnection agreements it has with other companies and across state lines. Another option for the Commission to address the inefficiencies and duplicative costs of managing multiple interconnection agreements would be to adopt a condition that would permit requesting carriers to utilize a standard ICA across the merged entities’ service territories – or at least one agreement per state.

⁶ See AT&T/BellSouth Merger Order, Appendix F, at 144 ¶ 4.

⁷ See also Cox/Charter Comments at 17-18 (noting that CenturyLink “lists 17 operating entities in Wisconsin, 9 in Louisiana, 7 in Arkansas and 5 in Missouri...” and that CenturyLink “uses this highly fragmented corporate structure to thwart competition vis-à-vis the interconnection arrangements it provides to competitors”).

⁸ *Application of Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Transfer of Control Under Section 214 of the Communications Act, As Amended*, WC Docket No. 10-110, Application for Consent to Transfer Control, at 2, (filed May 10, 2010).

⁹ Comments of Sprint Nextel Corporation, filed July 12, 2010 (“Sprint Comments”) at 11-12.

Clarifying Interconnection Conditions from Prior Mergers:

It is critical, however, that the Commission NOT simply adopt the same interconnection conditions it did in prior mergers. Although those conditions were positive overall for competition, the Commission needs to make some changes to the merger conditions to ensure that they are implemented in a manner that does not undermine the intent of the conditions. Comments filed by Sprint and Charter and Cox detail a number of the issues that those companies faced in attempting to extend or port prior contracts that actually *increased* transaction costs. For example, Charter and Cox noted that AT&T tried to limit competitors' ability to port agreements by revising, redrafting or modifying ported agreements in order to allegedly reflect "state specific" rates and terms.¹⁰ Sprint similarly noted that AT&T "ferociously" fought both porting and extending existing agreements before multiple state commissions and courts, a result that for Sprint frustrated the objective of reducing transaction costs and resulted in litigation.¹¹ T-Mobile watched these difficulties and chose not to avail itself to the right to port agreements to other states due to the heavy transaction costs created by, at best, uncertainty in the condition language, or, at worst, the prior merged companies' obstructionist actions.

In order to address these issues, T-Mobile urges the Commission to adopt merger conditions that minimize these transaction costs. There are several ways the Commission can accomplish this. It could, as suggested by Charter and Cox, adopt the same interconnection-related conditions for extending and porting ICAs as it has done in prior mergers and establish some principles that would govern implementation of those conditions.¹² Alternatively, the Commission could modify the language in the conditions themselves to address the past implementation problems. The latter approach (which is offered by Sprint) is preferable from T-Mobile's perspective because it should provide more clarity with respect to the merged entities' obligations, and thus a higher likelihood that the benefit of the conditions will be realized. Specifically, Sprint proposes that the following conditions be adopted:

A. Interconnection Contract Porting. The Merged Firm shall permit a carrier customer to "port" the entirety of an existing interconnection agreement (except for state-specific rates), whether negotiated or arbitrated, entered into with any CenturyLink/Qwest ILEC in any state within CenturyLink/Qwest ILEC territory, to any other CenturyLink/Qwest ILEC within a particular state or from a state in the Merged Firm's territory where it is

¹⁰ Cox/Charter Comments at 11.

¹¹ Reply Comments of Sprint Nextel Corporation, filed July 27, 2010, at 6; *see also Complaint and Request to Open Docket on behalf of Sprint Communications Company L.P., Nextel West Corp., and NPCR, Inc. against Wisconsin Bell, Inc. d/b/a AT&T Wisconsin*, Order Denying Petition for Rehearing, 2009 Wisc. PUC LEXIS 394 (Wis. PSC 2009).

¹² *See* Charter/Cox Comments at 11. Cox and Charter proposed that the Commission should affirm that there are only two reasonable limitations concerning porting agreements from one state to another state. These are (i) where an agreement contains terms that include state-specific rates that have been approved by that particular state's public utilities commission, or (ii) where unique terms are mandated by state law.

currently effective to any other state in the Merged Firm's territory and apply that agreement (whether it be an in-state agreement or an agreement from another state) to all carrier customer affiliates and aggregate all carrier customer affiliate arrangements under one ported agreement. For purposes of this condition, state-specific rates do not include billing arrangements such as bill-and-keep for the exchange of traffic or contractual provisions to share the costs of interconnection facilities. This condition shall continue for 48 months after the closing date of the merger and shall apply to any existing agreement, whether in its initial term or outside its initial term but where such agreements continue to be effective, and to any new agreements created during the 48 month period. Any agreement so ported more than 12 months after the merger shall be effective for 36 months after the porting request is granted. If an agreement is ported from another Merged Firm entity within a state or across state lines, any interconnection agreement that would otherwise apply is cancelled without penalty. Any existing interconnection agreement, whether in its initial term or otherwise currently effective, may be extended by a requesting carrier for 48 months or for three years after a request is granted, whichever is longer.

C. Nationwide Contract Negotiations and Administration. The Merged Firm shall recognize that porting of existing agreements across state lines and applicable to affiliated carrier customers may result in a nationwide interconnection agreement. Any negotiations necessary to facilitate such porting to accommodate application of such agreements in multiple states or among requesting carrier customers shall occur in a timely fashion and the results shall apply retroactively to the date that such porting was requested by a carrier customer. Negotiations concerning new or amended interconnection agreements shall be accomplished on a nationwide basis and include all Merged Firm ILECs in one contract.

Switched Access Rates

Federal regulations require the Regional Bell Operating Companies (“RBOC”) to implement a target rate of \$0.0055 per minute of use as the average traffic sensitive rate. Qwest is an RBOC and is already subject to this target rate. The Commission should make clear that CenturyLink, as the acquirer of Qwest, becomes its successor or assign and is therefore subject to the average traffic sensitive rate of \$0.0055. Therefore, CenturyLink’s current target of \$0.0065 should be reduced accordingly. In addition the Commission should impose conditions to reduce switched access pricing to the RBOC level. Although this is not the best solution to remedy inefficiencies and inequalities with respect to switched access pricing (which would be to bring access prices to incremental cost), it is, as Sprint notes, “a step in the right direction.”¹³

¹³ Sprint Comments at 11.

T-Mobile supports the following conditions proposed by Sprint in its Comments:

- Interstate Switched Access Rates in 47 C.F.R. 61.3(qq). No later than 30 days after the closing date of the Merger, all CenturyLink ILECs that do not already have an average traffic sensitive rate of \$0.0055 per minute as required by 47 C.F.R. 61.3(qq) shall reduce their average traffic sensitive rate to \$0.0055.
- Mirroring Interstate Rates in Overlap States. No later than 30 days after the closing date of the Merger, all Century Link ILECs in states where Qwest is an ILEC shall mirror the interstate switched access rates of Qwest.
- Mirroring Intrastate Access Rates. No later 30 days after the closing date of the Merger, all CenturyLink ILECs shall mirror the intrastate switched access rates of the RBOC (i.e., Verizon, AT&T or Qwest) operating in the state.

Rural Exemption

Under the Communications Act, rural companies benefit from a number of advantages designed to limit competition.¹⁴ If the merger is consummated, CenturyLink should no longer be able to avail itself of rural company status. Given CenturyLink's absolute and relative size, which post-merger will span 37 states and account for more than 17 million access lines, it is patently unfair to permit the company to reap the benefits of "rural" status. This should have a number of benefits, including streamlining the way that competing carriers can interconnect with the merged entities' networks in the former rural territories.¹⁵

¹⁴ For example, they may take advantage of procedures to preclude competitive entry using the rural exemption in section 251(f).

¹⁵ See Cox/Charter Comments at 17 (discussing how, due to CenturyLink's rural designation, Charter has been required to establish 13 different Points of Interconnection (POIs) with CenturyLink in Wisconsin).

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In sum, the Commission must ensure that appropriate conditions are imposed on the merger between Qwest and CenturyLink to mitigate the likelihood of anticompetitive behavior by the merging parties. These conditions are necessary not only to protect the competitive nature of the telecommunications marketplace, but also to ensure that the public interest is served.

Respectfully submitted,

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