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February 9, 2011

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte; WC Docket No. 10-110

Dear Ms. Dortch:

On February 2, 2011 the National Association of State Utility Consumer Advocates (“NASUCA”) submitted an *ex parte* letter to the Commission, in the above-referenced docket, stating that “under federal law, all consumers throughout CenturyLink’s expanded footprint should see net benefits if the merger occurs.” COMPTEL wholeheartedly agrees with NASUCA on this point. COMPTEL additionally emphasizes that the Commission should ensure that both wholesale and retail consumers experience a net benefit from the merger and stresses that there are certain issues that the Commission cannot rely on the state Commissions to address.

For example, in the legacy Qwest territory, the Merged Entity must maintain an OSS that meets the standards set forth under Section 271 of the Act. The Commission set the standard for OSS through its Section 271 approval process and must ensure continued compliance pursuant to Section 271(d)(6). COMPTEL and its members have proposed a number of conditions to provide some assurance of the Merged Entity’s continued compliance with its Section 271 OSS obligations such as continued use of the Qwest OSS for 36 months and clear substantive standards that any successor OSS must satisfy.¹

¹ See COMPTEL *Ex Parte*, Attachment entitled “COMPTEL MODIFICATIONS TO INTEGRA/CENTURYLINK SETTLEMENT ON MERGER CONDITIONS” p. 11 (filed Jan. 21, 2011)(“COMPTEL Jan. 21 Ex Parte”); Charter *Ex Parte*, p. 1 (filed Jan. 28, 2011)(“Charter Ex Parte”); PAETEC *Ex Parte*, pp. 1-2 (filed Jan. 28, 2011).

The Commission has unique experience in the special access market resulting from its jurisdiction over the rates and terms and condition of special access services pursuant to Sections 201 and 202 of the Act. COMPTTEL and its members have proposed a number of conditions to ensure that wholesale and retail purchasers of special access services – not just the merging parties – experience the benefits of the efficiencies and cost-savings resulting from the merger.² Consistent with Commission precedent COMPTTEL and its members have proposed a condition that provides for price cap rates in areas where Phase II pricing flexibility has been granted.³ Competition and existing Commission regulation have not been effective in controlling prices in these areas, making it of utmost importance for the Commission to ensure that consumers of these vital services experience some price benefits at this time as a result of the merger. COMPTTEL and its members have also proposed conditions concerning the terms and conditions in special access tariff contracts, such as providing for a footprint-wide contract that doesn't result in an increase in the current volume commitments.⁴

The fact that there is an open proceeding - that hopefully will address the market failure in the special access market (especially the increase in prices associated with Phase II pricing flexibility) - should not preclude the Commission from addressing special access services as part of the pending merger proceeding. The Commission standard of ensuring there is a public interest benefit when approving mergers, even where the benefit relates to special access services, is separate and distinct from its general obligation to ensure the price and terms and conditions for special access services are just and reasonable. The Commission's consideration of the issue in one context does not relieve it of its obligation to consider the issue in another context.

Other examples of conditions that this the Commission is better suited to address is the ability of carriers to enter into company-wide or state-wide interconnection agreements and the ability to port interconnection agreements across state lines. Commission precedent supports competitors having the ability to have the same contract

² As Sprint has been pointed out, “the proposed transaction poses significant potential harms to the already dysfunctions special access market and the interconnection arrangements needed by all competitive providers. The combined footprint of the two companies will increase their ability to leverage their control over these core facilities.” *Sprint Ex Parte*, p. 1 (filed Jan. 27, 2011)(“*Sprint Ex Parte*”). In addition to conditions that remedy potential harms, the Commission looks as part of its public interest evaluations for conditions that preserve and enhance competition in relevant markets. The applicant raised the cost reduction benefits of combining network and facilities. The Commission should ensure the customers of the Merged Entity share in these benefits.

³ *See COMPTTEL Jan. 21 Ex Parte Att.* at 14 of Attachment; *See also Sprint Ex Parte*, pp. 1-2 (filed Jan. 27, 2011).

⁴ *Id.*

used in multiple states as a means to reduce transaction costs associated with interconnection agreements.⁵

Finally, COMPTTEL emphasizes that, while the merging parties have reached an agreement with a few carriers, the Commission cannot rely on those settlement agreements to ensure that the public interest is served. Certain carriers may have issues that are so vital to their company that they are willing to sacrifice, in their negotiations, conditions in matters that are critical to other carriers' and consumers' business plans. The Commission should ensure that there are sufficient conditions in place that provide industry-wide public interest benefits rather than let the merging parties choose which business plans will be successful and which will not be successful post-merger.

Sincerely,
/s/ Karen Reidy

cc: Zac Katz
Margaret McCarthy
Angela Kronenberg
Brad Gillen
Christine Kurth
Sharon Gillett
Christi Shewman
William Dever
Nicholas Alexander
Alexis Johns

⁵ See *COMPTTEL Jan. 21 Ex Parte Att.* at 4-5; *Charter Ex Parte* at 1.