Granite TELECOMMUNICATIONS

February 28, 2011

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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

Dear Ms. Dortch:

Granite Telecommunications, LLC, submits this ex parte letter to express its concern regarding the proposed merger between CenturyLink and Qwest. As explained below, Granite provides analog business lines to many of America's largest corporations, distributing analog services sold to Granite by the incumbent LECs pursuant to commercial agreements. The proposed merger between Qwest and CenturyLink jeopardizes the competitive services that these businesses receive from Granite by allowing CenturyLink to leverage its incumbency to deny competitors the ability to serve customers in both CenturyLink and Qwest's territory.

Granite Telecommunications, LLC ("Granite") is a nationwide competitive provider of advanced telecommunications services to enterprise subscribers. Granite is the country's premier provider of nationwide local business telecommunications service for over 1,000,000 phone lines serving multi-location business customers, including 66 of the nation's Fortune 100 companies, as well as the United States Postal Service and many other governmental entities. Granite serves over 13,500 corporate clients at over 240,000 locations. Many of our customers are national in scope and have locations in almost every region of the country. Granite serves all 10 of America's 10 largest companies. Granite's customer retention rate is more than five times the industry average. With scalable solutions and dedication to "live" personalized service, Granite is able to meet the ever changing needs and demands of its multi-location customers.

As a non-facilities-based CLEC, Granite serves its customers predominantly through commercial agreements with the largest incumbent LECs. Granite is the nation's largest distributor of incumbent LEC analog services to businesses. While Granite is able to obtain volume and term wholesale contracts from the RBOCs, it has been unable to obtain such wholesale services in CenturyLink's territory.

In Qwest territory, in light of the *TRO* and *TRRO* which limited the availability of certain Section 251(c)(3) UNEs,[1] Granite and other CLECs entered into commercial agreements for a combined wireline

[1] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("*TRO*"), *corrected by* Errata, 18 FCC Rcd 19020 (2003), *aff'd in part, remanded in part, vacated in part, United States Telecom*

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voice offering (known as the Qwest Local Services Platform ("QLSP™")), which includes a combination of the local loop, port, switching and shared transport elements, so that Granite could offer competitive voice services to residential and business customers.[2]

Granite is concerned that as these agreements expire, the Applicants, will raise the prices pursuant to which Granite has been purchasing service from Qwest and/or reduce retail prices in Qwest territory below the price for their commercial wholesale offerings. These concerns are exacerbated because there is no viable wholesale commercial alternative to the Applicants' last mile facilities and the potential for entry of another source of last mile access to business customers is unlikely for the foreseeable future.[3]

For these reasons, the Commission should require as a condition of approval of the proposed merger that the Applicants offer CLECs the option of continuing current commercial agreements in effect for the full duration of merger conditions. This will not be burdensome to the Applicants since the negotiated prices are presumptively acceptable to the Applicants. Further, if Applicants' claims of increasing competition are correct, it would stand to reason that prices negotiated after the merger would be lower than those established several years ago. Hence, affording CLECs the option of continuing commercial agreements should not harm the Applicants. At the same time, however, this condition would further promote regulatory certainty and competition.

In addition, the Commission should require that as a condition of the merger, Applicants' commercial agreements with CLECs include the offering of voice services when fiber facilities are deployed directly to business locations. Qwest has not offered voice services over such facilities under a commercial agreement. For instance, Qwest's QLSP™ is an analog voice-grade service that may be offered to business customers. The service is not, however, available where customers are served by facilities that are exclusively fiber and packet-based.[4] As a consequence, business customers served by such facilities do not have competitive options that would otherwise be available to them if services were provisioned to them over analog facilities.

Further, because many business customers have multiple locations, some of which are served by fiber, Applicants are able to impede competitors from serving such customers across an entire region by not offering a service that is similar to QLSP™ that is provisioned over fiber and is digital-based, i.e., non-analog-based facilities. For example, if a business has 100 locations in Applicants' territory and Applicants serve 10 of those locations over fiber, because a competitive carrier cannot offer service to the 10 locations served by fiber, it will likely lose the business of the 90 locations served by copper.

Ass'n v. FCC, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied sub nom. Nat'l Ass'n Regulatory Util. Comm'rs v. United States Telecom Ass'n*, 125 S. Ct. 313 (2004); *see Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶¶ 149-154 (2005) ("*TRRO*"), *aff'd*, *Covad Commc'ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

[2] *See, e.g.,* http://www.qwest.com/wholesale/pcat/qlspbusres.html; http://www.qwest.com/wholesale/clecs/commercialagreements.html (both last visited July 12, 2010).

[3] *Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, 25 FCC Rcd 8622, 8660-62 ¶¶ 72-74 (2010) (discussing barriers to loop deployment and finding that significant new deployment of loops is unlikely) pet for review filed sub nom *Qwest Corp. v. FCC*, Case No. 10-9543, (10th Cir. filed July 30, 2010).

[4] *See* http://www.qwest.com/wholesale/pcat/qlspbusres.html.

Similarly, by denying competitors access to a wholesale service similar to QLSP in the CenturyLink footprint, the Applicants are able to impede competition to serve customers regionwide. If a potential customer requires service at 100 locations, 70 in Qwest territory and 30 in CenturyLink territory, the Merged Company can offer the customer one-stop shopping for all 100 locations. CenturyLink's failure to offer a competitor any service similar to QLSP results in the competitor's inability to serve customers in the CenturyLink footprint, which in turn will likely lead to the loss of the business by the competitor in the Qwest market, as well as in the CenturyLink market.

This competitive harm is a direct outgrowth of the merger. Before the merger, Granite could compete for the 70 locations in the Qwest market. The combination of Qwest and CenturyLink, however, provides the merged entity with the ability to exclude Granite from the Qwest market by leveraging its power in the CenturyLink market. By denying access in CenturyLink territory the combined entity can effectively deny Granite access to customers that seek service across the entire merged company, effectively denying consumer choice.

Thus, the Commission should, as a condition to approval of the application, require that Applicants' ILECs allow entire negotiated commercial QLSP™ and line sharing agreements with Qwest to be ported to CenturyLink ILEC operating territories subject to state specific pricing, based on Qwest's pricing model, and technical feasibility.

Respectfully Submitted,

GRANITE TELECOMMUNICATIONS, LLC

Samuel J. Kline
Vice-President - Strategic Initiatives