

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

In the Matter of	)	
	)	
QWEST COMMUNICATIONS	)	
INTERNATIONAL, INC.,	)	
Transferor	)	WC Docket No. 10-110
	)	
and	)	
	)	
CENTURYTEL, INC. d/b/a CENTURYLINK	)	
Transferee	)	
	)	
Application for Transfer of Control Under	)	
Section 214 of the Communications Act, as	)	
Amended.	)	
_____	)	

**OPENING COMMENTS OF  
LEAP WIRELESS INTERNATIONAL, INC.**

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July 12, 2010

**OPENING COMMENTS OF  
LEAP WIRELESS INTERNATIONAL, INC.**

Leap Wireless International, Inc., on behalf of itself and its affiliated entities (collectively “Leap”) submits these opening comments on the Application of Qwest Communications International, Inc. (“QCI”) and CenturyTel, Inc. d/b/a CenturyLink (“CenturyLink”) for transfer of control (“Application”).

**I. INTRODUCTION**

Leap, through its subsidiary Cricket Communications, Inc., provides consumers with state-of-the-art mobile wireless services in packages targeted to meet the needs of those consumers who are under-served by more traditional wireless service offerings. Leap and its joint venture partners provide wireless service in 35 states under the Cricket® brand. Leap’s service offers an affordable alternative to traditional wireless and landline services and is somewhat unique in that it offers unlimited local and long distance airtime and unlimited text and multi-media messaging for a low, flat monthly fee, with no signed contract. Consequently, Leap’s customers often use its service in a manner similar to wireline customers. Indeed, a majority of Leap’s customers have “cut the cord” and do not subscribe to wireline service. Leap is able to offer its high-quality, low-cost mobile service in large part because it has streamlined its back-office functions and operates its network economically.

Leap offers service to customers in most of the incumbent local exchange carrier (“LEC”) territories currently served by CenturyLink and Qwest Communications (“Qwest”). Leap has almost two dozen interconnection agreements (“ICAs”) with these companies, and those agreements govern the rates, terms, and conditions under which Leap interconnects its network with the incumbent LECs’ networks and obtains related

services and facilities. Leap also obtains tariffed services from each of the Applicants, primarily special access services that enable Leap to connect its cell sites to its switches (known as “back haul”) and its switches to each other (“long haul”). Leap relies on this interconnection and these services and facilities it obtains from CenturyLink and Qwest to offer Leap’s wireless services to end-user customers.

Leap’s interest in this proceeding is critical but narrow. Leap does not oppose the transaction but seeks only to ensure that the proposed transfer does not adversely affect Leap’s operations or its ability to offer service to its customers. More specifically, Leap strongly recommends that the Commission condition its approval of the transaction on CenturyLink and Qwest continuing to provide interconnection and related contract and tariffed facilities and services to Leap and other competing carriers at the same rates, terms, and conditions they currently offer them for three years after the proposed transaction closes.

## **II. DISCUSSION**

### **A. The Application Does Not Demonstrate that the Proposed Transaction Is in the Public Interest Without Including Additional Conditions.**

The ink was scarcely dry on the Commission order approving the transfer of control of Embarq Corporation to CenturyTel, Inc.,<sup>1</sup> when CenturyLink returned to the Commission for approval of its acquisition of QCI. Indeed, CenturyLink is still in the process of integrating the legacy Embarq and CenturyTel operations and has asked the Commission for at least one waiver of its regulatory obligations as a result of that

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<sup>1</sup> *In re Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, WC Docket No. 08-238, Memorandum Opinion and Order (rel. June 25, 2009) (“*CenturyTel-Embarq Merger Order*”).

integration process.<sup>2</sup> CenturyLink, currently a predominantly rural incumbent LEC, now seeks to take control of a Bell Operating Company (“BOC”) that is the third largest incumbent LEC in the country. Particularly under these circumstances, the Commission should take special care to ensure that CenturyLink’s latest acquisition will not negatively impact competition or consumers’ ability to obtain telecommunications services from the provider of their choice.

The Application, however, does not include any such safeguards. The Applicants include virtually no discussion of the interconnection, services, and facilities that they provide to competing carriers and devote little more than one page of their Application to the impact of the proposed transaction on service to existing customers, including competitors. The Application represents only that the companies “confirm that existing wholesale arrangements will remain intact, with the surviving company honoring the terms of existing agreements,” and that they “will meet their ongoing obligations under interconnection agreements and Section 251 of the Communications Act, and Qwest’s obligations under Section 271 of the Act.”<sup>3</sup> Such general assurances are insufficient.

The Commission previously recognized that the merger between CenturyTel and Embarq posed an increased risk of anticompetitive behavior. The Commission found “that the increased size of CenturyTel’s study area resulting from the merger may increase its incentive to engage in anticompetitive activity,” and “to the extent that CenturyTel has been less willing to cooperate with competitors than Embarq – as numerous commenters allege – following the merger, CenturyTel may extend this

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<sup>2</sup> *In re Local Number Portability Porting Interval and Validation Requirements, et al.*, WC Docket No. 07-244, *et al.*, CenturyLink Petition for Waiver of Deadline (filed June 7, 2010).

<sup>3</sup> Application at 37.

behavior to the Embarq territories.”<sup>4</sup> The Commission concluded that several enforceable conditions were necessary to address these potential harms.<sup>5</sup>

Qwest’s footprint is far larger than Embarq’s, and Qwest is a BOC. Qwest currently serves the majority of customers in 14 western states, and a combination of CenturyLink and Qwest correspondingly poses an even greater potential for the resulting entity to engage in anticompetitive behavior than the CenturyTel-Embarq transaction. The Applicants, however, do not even offer the same conditions that CenturyTel and Embarq volunteered to mitigate the impact of their merger on competition. Lesser representations that the companies will comply with general legal and contractual obligations do not address the heightened risk the proposed transaction poses in this case.

**B. The Commission Should Condition Its Approval of the Proposed Transaction on Commitments that Will Protect Competition.**

CenturyLink agreed to several commitments to protect competition in the context of its acquisition of Embarq, and the Commission adopted them as enforceable conditions of the merger. The Commission has imposed additional conditions in other mergers when a BOC is involved.<sup>6</sup> Those conditions should be the starting point for commitments in this proceeding. Specifically, the Commission should require CenturyLink (1) to extend the effectiveness of ICAs between requesting carriers and legacy CenturyTel, Embarq, or Qwest for three years beyond the closing date of the transaction; and (2) to cap the rates charged by these incumbent LEC entities for special access services for the same period of time and prohibit the merged company from discriminating in favor of its affiliates in the provisioning of such services.

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<sup>4</sup> *CenturyTel-Embarq Merger Order* ¶ 33.

<sup>5</sup> *Id.*

<sup>6</sup> *See, e.g., AT&T/BellSouth Merger Order*, Appendix F, 22 FCC Rcd 5662 (2007).

**1. The effectiveness of existing ICAs should be extended for three years.**

Leap is a party to ICAs with Qwest, legacy CenturyTel, and legacy Embarq, and the initial term of all or virtually all of those agreements has expired, leaving those agreements effective only on a month to month basis.<sup>7</sup> Leap's agreements with Qwest have been in this "evergreen" status for several years, which reflects both parties' satisfaction with the existing ICAs. Renegotiating (and likely rearbitrating) new ICAs would be time-consuming and expensive for both parties – a diversion of resources that would be unwarranted in light of their long history of operating under the same agreements for the last 10 years.

Leap's ICAs with Qwest, moreover, are significantly different than the agreements with legacy CenturyTel and legacy Embarq. The Qwest agreements are over 100 pages long, while the Leap ICAs with Embarq and CenturyTel are less than half that length and level of detail. Leap's ICA with CenturyTel in Missouri, for example, is only 30 pages long. Some of that discrepancy is attributable to CenturyTel's status as a rural incumbent LEC while Qwest is a BOC, but as a commercial mobile radio services ("CMRS") provider, Leap's ICAs are devoted to rates, terms, and conditions for interconnection, which all incumbent LECs are obligated to provide. CenturyTel and Qwest also take different substantive positions on legal issues. Pursuant to the Commission's "mirroring requirement," for example, Qwest offers to exchange all local traffic at the \$0.0007 per minute of use ("MOU") rate the Commission has prescribed for traffic bound for Internet service providers ("ISPs"),<sup>8</sup> while CenturyTel has not offered that option, choosing instead to exchange all local traffic at the reciprocal compensation rate for

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<sup>7</sup> Leap's ICAs with CenturyTel and Embarq are nevertheless effectively extended for two years beyond the closing date of the CenturyTel-Embarq merger pursuant to one of the conditions in the Commission's order approving the merger. *See CenturyTel-Embarq Merger Order* at 30.

<sup>8</sup> *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 & 99-68, FCC 01-131, Order on Remand and Report and Order ¶ 89 (rel. April 27, 2001) (subsequent history omitted).

voice traffic, which is generally around \$0.01 per MOU. A shift in the Qwest service territory to CenturyLink's position on this issue alone would substantially increase Leap's costs of doing business.

The only reason Qwest would have to terminate and renegotiate its existing ICAs with Leap after the transaction closes would be to reflect the legal, policy, and possibly operational positions of the company's new owner, CenturyLink. The proposed transaction, not business necessity, thus would be the motivation for Qwest to disrupt the parties' longstanding relationship and to require both parties to expend limited resources to negotiate and arbitrate new ICAs – resources that would be far better spent on serving end user customers.

Not surprisingly, the Commission has conditioned its approval of virtually all incumbent LEC mergers since passage of the Telecommunications Act of 1996 on the merged entity's agreement to extend the term of existing ICAs for up to three years beyond the closing date to avoid just such disruption and waste of resources.<sup>9</sup> The Commission conditioned its approval of the merger between CenturyTel and Embarq, in part, on the companies' commitment not "to terminate or change the conditions of any other effective interconnection agreement, including the POI, for a period of two years after the Transaction Closing Date, unless requested by the interconnecting party."<sup>10</sup> A two year extension, however, would not be sufficient here. Qwest is a BOC, rather than another predominantly rural incumbent LEC, and its ICAs are fundamentally different than the legacy Embarq and CenturyTel ICAs.

The Commission, therefore, should follow the precedent of its prior mergers involving acquisition of a BOC and require CenturyLink to maintain the existing ICAs between requesting

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<sup>9</sup> *E.g., AT&T/BellSouth Merger Order*, Appendix F, at 150.

<sup>10</sup> *CenturyTel-Embarq Merger Order* at 30.

carriers and legacy CenturyTel, Embarq, and Qwest entities for three years after the transaction closes. The following proposed condition is based on the comparable Reducing Transaction Costs Associated with Interconnection Agreements Condition number 4 in the *AT&T/BellSouth Merger Order*:<sup>11</sup>

The CenturyLink/Qwest incumbent LECs shall permit a requesting telecommunications carrier to extend its current interconnection agreement, regardless of whether its initial term has expired, for a period of up to three years, subject to amendment to reflect prior and future changes of law. During this period, the interconnection agreement may be terminated only via the carrier's request unless terminated pursuant to the agreement's "default" provisions.

**2. Special access service rates should be capped for three years, and the merged company should be prohibited from providing more favorable service offerings to its affiliates.**

Interconnection with the incumbent LECs is critically important for competitors, but the availability of back haul and long haul facilities at reasonable rates, terms, and conditions is vital to wireless carriers' ability to provide service to their customers. Leap and other CMRS providers construct their own wireless facilities, but they depend on the landline network to bring traffic from their cell sites to and between their mobile switching centers. In some cases Leap has a choice of landline service provider, but by and large Leap must use incumbent LEC special access services for its back haul and long haul needs.

Incumbent LEC special access services represent one of the largest components of Leap's network costs, and they are a cost component Leap cannot control. Leap is able to offer customers wireless service at a low, flat rate because Leap operates efficiently and passes its cost savings on to its customers. An increase in special access rates when Leap has no alternative to such services could result in higher prices for consumers, which is particularly problematic during these times of widespread economic hardship. The prices for the special access services

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<sup>11</sup> *AT&T/BellSouth Merger Order*, Appendix F, at 150.

Leap obtains from Qwest and CenturyLink have been relatively stable recently, but the costs the companies will incur to complete the proposed transaction and thereafter to integrate their operations will increase pressure on the merged company to increase revenues – particularly from services provided to competitors who have no alternative source of supply.

The Commission, therefore, should ensure that the transaction does not result in rate increases for the special access services the Applicants provide to their competitors. Accordingly, the Commission should prohibit the combined company from increasing special access rates for three years from the transaction close. Leap proposes the following condition modeled on the comparable Special Access Condition number 5 in the *AT&T/BellSouth Merger Order*:<sup>12</sup>

No CenturyLink/Qwest incumbent LEC may increase the rates in its interstate tariffs, including contract tariffs, for special access services that it provides in the CenturyLink/Qwest in-region territory, as set forth in tariffs on file at the Commission on the Transaction Closing Date or subsequently amended tariffs for three years from that Date.

By combining the third and fifth largest incumbent LECs in the country, the proposed transaction also creates the risk the merged company will provide special access or comparable services between affiliated companies on terms and conditions that are not available to competitors. Certainly the Applicants should be able to take advantage of whatever synergies arise as a result of the proposed transaction, but they should not be able to do so at the expense of undermining competition. Accordingly, the Commission should prohibit the merged company from providing special access or comparable services to affiliates that are not available to non-affiliated customers on the same terms and conditions. Leap proposes the following condition

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<sup>12</sup> *Id.* at 151.

modeled on the comparable Special Access Condition number 3 in the *AT&T/BellSouth Merger Order*.<sup>13</sup>

CenturyLink/Qwest will not provide special access or comparable service offerings to its affiliates that are not available to other similarly situated special access or comparable service customers on the same terms and conditions.

### III. CONCLUSION

For the reasons stated above, the Commission should minimize the potential harm to competition that could arise from the proposed transaction by adopting the conditions Leap has proposed as part of any approval of the Application.

Respectfully submitted,

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<sup>13</sup> *Id.* at 150.