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

In the Matter of	)	
	)	
QWEST COMMUNICATIONS INTERNATIONAL INC. and	)	WC Docket No. 10-110
	)	
CENTURYTEL, INC. D/B/A CENTURYLINK	)	
	)	
Application for Transfer of Control Under Section 214 of the Communications Act, as Amended	)	

COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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I. INTRODUCTION

On May 10, 2010, CenturyTel, Inc. d/b/a CenturyLink ("CenturyLink") and Qwest Communications International Inc. ("Qwest") submitted an application to the Federal Communications Commission ("FCC" or "Commission") for consent to transfer control ("Application").[1] Pursuant to the schedule set forth in the Commission's Public Notice,[2] the New Jersey Division of Rate Counsel ("Rate Counsel") submits these comments.[3]

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[1]/ Qwest Communications International Inc., Transferor, and CenturyTel, Inc. d/b/a CenturyLink, Transferee, Application for Transfer of Control Under Section 214 of the Communications Act, as Amended (filed May 10, 2010) ("Application"). On May 20, 2010, the transferee's company name changed to CenturyLink, Inc. *Id.*, at 38, n. 63.

[2]/ WC Docket No. 10-110, "Applications filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a CenturyLink for Consent to Transfer of Control, Pleading Cycle Established," DA 10-993, rel. May 28, 2010.

[3]/ On May 19, 2010, the Applicants also submitted a Joint Petition to the New Jersey Board of Public Utilities seeking the Board's approval no later than December 31, 2010. New Jersey BPU Docket

A. INTEREST OF RATE COUNSEL IN THE INSTANT PROCEEDING.

Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. Rate Counsel participates actively in relevant Federal and state administrative and judicial proceedings. Rate Counsel has participated in many FCC proceedings concerning transfers of control.[4] The above-captioned proceeding is

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No. TM10050343, Joint Petition of Qwest Communications Company, LLC and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Communications Company, LLC ("New Jersey Petition"), at 1. CenturyLink and Qwest each operate in New Jersey, the former as an incumbent local exchange carrier ("ILEC") and the latter as an interexchange carrier and competitive local exchange carrier. *See* New Jersey Petition, at 2, citing *In the Matter of the Petition of Qwest Communications Corporation requesting authority to provide local exchange telecommunications services throughout the State of New Jersey,* Order of Approval, June 29, 2001, Docket No. TE09121421, and also explaining that in 2009, Qwest Communications Corporation converted to a Delaware limited liability company (Qwest Communications Company LLC).

[4] / *See, e.g.,* In the Matter of Transfer of Control Filed by SBC Communications Inc. and AT&T Corp., WC Docket No. 05-65, Initial and Reply Comments of Rate Counsel, April 25, 2005, and May 10, 2005, respectively; In the Matter of Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control, Federal Communications Commission WC Docket No. 05-75, Initial Comments, May 9, 2005 (including affidavit of Susan M. Baldwin and Sarah M. Bosley), Reply Comments, May 24, 2005; In the Matter of AT&T Inc. and BellSouth Corporation Applications for Approval of Transfer of Control, Federal Communications Commission WC Docket No. 06-74, Initial Comments, June 5, 2006 (including declaration of Susan M. Baldwin and Sarah M. Bosley), Reply Comments, October 3, 2006 (including declaration of Susan M. Baldwin, Sarah M. Bosley and Timothy E. Howington); In the Matter of Embarq Corporation, Transferor, Application for Transfer of Control of Domestic Authorizations Under Section 214 of the Communications Act, as Amended, WC Docket No. 08-238, Initial Comments, January 8, 2009, Reply Comments, January 23, 2009; In the Matter of Applications filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control, WC Docket No. 09-95, Comments of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, September 21, 2009. Rate Counsel has also participated in the investigation by the Board of Public Utilities of various mergers and transactions, including the spin-off of Sprint's local operations. In the Matter of Joint Petition of United Telephone Company of New Jersey, Inc. d/b/a Sprint and LTD Holding Company for Approval Pursuant to *N.J.S.A.* 48:2-51 and *N.J.S.A.* 48:3-10 of a change in Ownership and Control, New Jersey Board of Public Utilities Docket No. TM05080739, Testimony of Susan M. Baldwin on behalf of Rate Counsel, November 29, 2005.

germane to Rate Counsel's continued participation and interest in implementation of the Telecommunications Act of 1996.[5]

B. OVERVIEW OF TRANSACTION

On April 21, 2010, CenturyLink and Qwest ("Applicants") entered into an Agreement and Plan of Merger.[6] On April 22, 2010, CenturyLink publicly announced that it would buy Qwest. The sale is an all stock deal that puts Qwest's value at approximately $10.6 billion.[7] As of December 31, 2009, CenturyLink and Qwest served local telephone customers in 37 states with approximately 5 million broadband customers, 17 million access lines, 1,415,000 video subscribers and 850,000 wireless consumers.[8]

The Applicants are seeking the transfer of control of the Qwest subsidiaries that provide domestic interstate communications service to CenturyLink in a stock for stock transaction that has been approved by the Boards of Directors of both companies.[9] The estimated value of the transaction on an "enterprise basis" (equity plus debt) is $22.4 billion.[10] CenturyLink shareholders will own approximately 50.5% and Qwest shareholders will own approximately 49.5% of the combined company and Qwest's operating subsidiaries will continue to be subsidiaries of Qwest and will be indirect

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5/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred to as "the 1996 Act," or "the Act," and all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

6/ Application, at 5.

7/ CenturyTel Press release, April 22, 2010, available at: http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-newsArticle_Print&ID=1416196&highlight=.

8/ *Id.* CenturyLink would add local exchange networks in the following states as a result of the proposed transaction: Arizona, Utah, North Dakota, and South Dakota. Application, at 6.

9/ *Id.*, at 1. The proposed transaction, according to the Applicants, does not require additional debt, has no financing conditions, and "does not involve complex financial or tax structures." *Id.*, at 5.

10/ *Id.*, at 5.

subsidiaries of CenturyLink. Likewise, CenturyLink's operating subsidiaries will continue to be CenturyLink subsidiaries.[11] The Applicants state that there will be no change in operation structure for either company.[12]

The Applicants submitted the requisite notification and report forms under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act") with the Department of Justice ("DOJ) and the Federal Trade Commission ("FTC").[13] In addition to the FCC's approval, the Applicants also require approvals by some state regulatory commissions.

C. CONTEXT OF TRANSACTION WITHIN THE TELECOMMUNICATIONS INDUSTRY

Less than a year after CenturyTel and Embarq Corporation merged,[14] and before CenturyLink has even completed the integration of the operating systems of these two companies,[15] CenturyLink seeks to expand yet further the scale and scope of its company by exchanging Qwest stock for CenturyTel stock (and thereby the 14-state footprint once served by US West's "baby Bell" companies of Mountain Bell, Northwestern Bell,

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11 / *Id.*

12 / *Id.*

13 / Prospectus, at 6. Under the HSR Act, if a second request for information is made, the waiting period expires on the 30th day after the Applicants have substantially complied with the request unless the waiting period is terminated earlier or the parties otherwise agreed to extend the waiting period. *Id.*

14 / The merger between CenturyTel and Embarq occurred July 1, 2009. Form S-4, filed by CenturyLink, June 4, 2010, with the Securities and Exchange Commission ("Prospectus"), at 1.

15 / Among other evidence that CenturyLink has not yet completed its integration of the Embarq operations, CenturyLink seeks a waiver of the August 2, 2010 deadline for implementing the new one business day porting interval and validations requirement that the Commission previously approved. CenturyLink indicates that it seeks more time because it is in the process of integrating two operating systems as a result of its recent merger with Embarq. *See* In the Matter of Local Number Portability Porting Interval and Validation Requirements, Telephone Number Portability, WC Docket No. 07-244, CC Docket No. 95-116, *Petition for Waiver of Deadline*, June 7, 2010, at 2. *See also* Prospectus, at 16.

Pacific Northwest Bell). The Applicants' May 10th submission precedes the FCC's decision in the Frontier-Verizon proceeding by only a matter of eleven days.[16] This most recent wave of transactions is changing the national telecommunications market structure significantly, and is further concentrating markets that have already undergone substantial consolidation since the enactment of the Telecommunications Act of 1996.

A series of acquisitions since 2009, including this proposed transaction, will reduce the ten largest incumbent local exchange carriers to seven and alter the composition of local markets nationwide. Following CenturyTel's acquisition of Embarq in 2009, Frontier obtained regulatory approvals to acquire the rural assets of Verizon in May 2010, and Windstream completed its acquisition of Iowa Telecom on June 1, 2010.[17] CenturyLink's proposed acquisition of Qwest contributes to the consolidation of an industry that only fourteen years ago was projected to grow into more competitors, not fewer.

Table 1 below shows the number of access lines for the ten largest incumbent local exchange carriers as of March 31, 2009.

Table 1[18]

Largest Incumbent Local Exchange Carriers

(measured by access lines served as of March 31, 2009)

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[16] / In the Matter of Applications Filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control, WC Docket No. 09-95, *Memorandum Opinion and Order*, rel. May 21, 2010 ("Verizon-Frontier Order").

[17] / Windstream press release, "Windstream Completes Acquisition of Iowa Telecom," June 1, 2010.

[18] / AT&T Investor Briefing, 1st Quarter 2010, April 21, 2010, at 17; CenturyLink Form S-4, June 4, 2010, at 10-11; Cincinnati Bell Inc SEC Form 10-Q, May 7, 2010, at 21; Embarq SEC Form 10-Q, May 7, 2009, at 17; FairPoint SEC Form 10-Q/A (for period March 31, 2010), June 18, 2010, at 10; Frontier SEC Form 10-Q, May 6, 2010, at 29; Iowa Telecommunications Services, Inc. SEC Form 10-Q, April 26, 2010, at 22; Verizon Investor Quarterly - Q1 2010, at 14; Windstream SEC Form 10-Q, May 6, 2010, at 29.

Company	Access Lines
Verizon	35,197,000
AT&T	29,969,000
Qwest	10,800,000
Embarq	5,552,000
Windstream	2,965,400
Frontier	2,216,803
CenturyTel	1,993,000
FairPoint	1,700,000
Cincinnati Bell	765,300
Iowa Telecom	249,100

Table 2 below shows these same companies after accounting for the transactions of the past year, and the effects of the proposed sale of Qwest to CenturyLink.

Table 2[19]

Post-Merger Incumbent Local Exchange Carriers

(measured by access lines served as of March 31, 2010)

Company	Access Lines
Verizon	27,741,000
AT&T	26,633,000
CenturyLink	16,576,000
Frontier	6,190,812
Windstream	3,353,100
FairPoint	1,500,000
Cinncinati Bell	711,700
Embarq	***absorbed***
Iowa Telecom	***absorbed***
Qwest	***absorbed***

Furthermore, within individual states, where there had been multiple local exchange carriers with the potential to enter and compete within each others' "home" regions, increasingly a single local carrier dominates nearly entire state markets. The following table only reflects the impact of the CenturyLink-Qwest merger – other

[19] / *Id.*

transactions have also reduced the number of local exchange carriers serving a particular state. For example, Verizon and Frontier had each served markets within West Virginia. As a result of the recent merger, Frontier will serve the vast majority of all West Virginia end user lines. Note that several states, e.g., Colorado, Minnesota, Oregon, Washington, are home to significant numbers of both CenturyLink and Qwest customers. This transaction will reduce the potential for competition between the Applicants.

Table 3

Applicants' Access Lines by State (as of December 31, 2009)[20]

State	Qwest	CenturyLink	State	Qwest	CenturyLink
Alabama	0	253,700	Nevada	0	522,700
Arizona	1,457,280	0	New Jersey	0	144,700
Arkansas	0	182,400	New Mexico	553,142	4,700
California	0	100	North Carolina	0	997,300
Colorado	**1,527,319**	**76,900**	North Dakota	78,862	0
Florida	0	1,351,700	Ohio	0	387,800
Georgia	0	30,100	Oklahoma	0	2,200
Idaho	331,225	4,900	**Oregon**	**667,700**	**109,100**
Illinois	0	49,300	Pennsylvania	0	271,500
Indiana	0	185,600	South Carolina	0	75,600
Iowa	594,570	1,500	South Dakota	102,864	0
Kansas	0	84,100	Tennessee	0	176,100
Louisiana	0	75,600	Texas	0	303,500
Michigan	0	80,900	Utah	601,199	0
Minnesota	**1,068,799**	**143,600**	Virginia	0	333,900
Mississippi	0	20,000	**Washington**	**1,297,470**	**200,000**
Missouri	0	547,600	Wisconsin	0	343,100
Montana	202,719	49,800	Wyoming	143,900	11,500
Nebraska	193,586	17,500			

The loss of ILECs also means the loss of information for regulators who could otherwise compare ILECs' levels of retail and wholesale service quality, levels and quality of broadband deployment, retail and wholesale rates, terms, and conditions, etc. This loss of

[20] / http://news.qwest.com/company; http://www.centurylink.com/Pages/AboutUs/CompanyInformation/CompanyStats/.

benchmarking information,[21] is not itself a reason for opposing the proposed transaction, but it is important for the FCC to consider the implications of the loss of this regulatory "tool" as it examines the impact of the transaction on the Applicants' consumers and competitors.

II. PROPOSED TRANSACTION

Description of CenturyLink

CenturyLink is headquartered in Monroe, Louisiana, and offers local, long-distance, wholesale access, high-speed Internet and transport services to residential and business customers in 33 states.[22] CenturyLink served 7 million local exchange lines as an incumbent local exchange carrier ("ILEC") and had 2.2 million high-speed Internet access service customers as of December 31, 2009.[23] CenturyLink operates as a competitive local exchange provider in some markets.[24] New Jersey is one of the states that CenturyLink serves as an ILEC.

Description of Qwest

Qwest is headquartered in Denver, Colorado, and operates as an ILEC in 14 states and served 10.3 million access lines in those states and had approximately 3 million

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21 / Rate Counsel acknowledges that the Commission, in its AT&T/BellSouth Order, found that benchmarking "does not represent as useful or important a regulatory tool as the Commission previously believed." In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74, *Memorandum Opinion and Order*, rel. March 26, 2007, at para. 189. Nevertheless, Rate Counsel urges the Commission to revisit this issue, and to retain the perspective that benchmarking provides in regulatory matters.

22 / Application, at 3. The states include: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. *Id.*

23 / *Id.*

24 / *Id.* Through CenturyTel's acquisition of Embarq, CenturyTel increased its size from approximately 2 million lines to approximately 7 million lines. *See* Table 2, infra.

broadband customers as of December 31, 2009.[25] Qwest also offers wireless and video services to consumers through "sales relationships" with DirecTV and Verizon Wireless.[26] Qwest offers Internet access and digital telephone service to residential consumers and provides in-region services to enterprise, business, and government customers and provides wholesale services as well.[27] Qwest operates in New Jersey as an interexchange carrier and CLEC.[28]

Description and governance of CenturyLink after the transaction

As Table 4 below shows, after the completion of the transaction, CenturyLink will have more than 16 million access lines, operating revenues of over 19.7 billion dollars and net operating income of approximately 3.6 billion dollars. Post-merger, CenturyLink will have local exchange operations in 37 states.[29]

SB44 Acquisition Company is a wholly owned subsidiary of CenturyLink formed on April 21, 2010 for the purpose of effecting the merger. Upon completion of the merger, it will be merged with and into Qwest. On April 21, the CenturyLink board of directors unanimously approved the merger agreement as did the Qwest board of directors.[30] CenturyLink has sought the financial advice of Barclays Capital Inc. ("Barclays"), Evercore Group L.L.C. ("Evercore"), and J.P. Morgan Securities, Inc. ("JP Morgan").[31] Qwest has sought the financial advice of Lazard Frères & Co. LLC

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[25] / Application, at 4. Those states are: Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. *Id.*

[26] / *Id.*

[27] / *Id.*

[28] / *See* fn 3.

[29] / Application, at 6. *See also* Table 3, supra.

[30] / Prospectus, at 3.

[31] / Prospectus, at 3-4.

("Lazard"), Deutsche Bank Securities, Inc. ("Deutsche Bank"), and Perella Weinberg Partners LP ("Perella Weinberg").[32]

Following the merger's consummation, four persons selected by Qwest (after consultation with CenturyLink), who are presently members of Qwest's board of directors, will be appointed to CenturyLink's board of directors, one of whom will be Qwest's Chairman and Chief Executive Officer, Edward A. Mueller.[33] The Prospectus identifies the expected post-merger senior leadership team.[34] The transaction will increase the quantity of CenturyLink directors from thirteen to seventeen. The merger contemplates a parent-level transfer of control of Qwest.[35]

Table 4

CenturyLink and Qwest Key Metrics: Pre- and Post-Merger[36]

	CenturyLink	Qwest	Combined Pro Forma
Total Access Lines (3/31/2010)	6,913,000	9,663,000	16,576,000
Broadband Connections (3/31/2010)	2,306,000	2,852,000	5,158,000
2009 Operating Revenues (millions)	$4,974	$12,311	$19,758
2009 Operating Income (millions)	$1,233	$1,975	$3,651
2009 Net Income (millions)	$647	$662	NA

Applicants' description of anticipated consumer benefits

32 / Prospectus, at 4-5.

33 / Prospectus, at 6.

34 / Prospectus, at 6.

35 / Application, at 5-6.

36 / Prospectus, at 10-12.

The Applicants assert that: "the transaction would create substantial public interest benefits, with no offsetting harms, and the Commission therefore should approve the application."[37] The Applicants state that there are "very few" geographic areas in which the businesses of each company overlap and that "the proposed merger raises no competitive concerns, even within those markets."[38] The Applicants suggest that where the companies currently operate adjacent networks as ILECs, the merged company will be better able to serve customers in the region.[39] The Applicants assert that the proposed transaction is in the public interest because the merged entity will be a "stronger company with a national platform" that can accelerate the deployment of broadband and provide a video and bundle service competitor vis-à-vis cable companies.[40] Furthermore, the Applicants state that because of the merged company's stronger financial outlook, the company will be able to compete in the enterprise and government markets against AT&T and Verizon.[41] The Applicants expect to derive cost synergies from the economies of scale and scope that arise from the combination.[42]

Specifically, the Applicants anticipate generating annual operating cost savings of approximately $575 million and to fully realize those savings within three to five years following the completion of the merger.[43] They also anticipate generating annual capital expenditure savings of approximately $50 million within the first two years following the

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37 / Application, at 8.

38 / *Id.*, at 2.

39 / *Id.* There are no adjacent territories in New Jersey. Id., at Exhibit 5.

40 / *Id.*

41 / *Id.*

42 / *Id.*

43 / Prospectus, at 43.

merger's completion.[44] Rate Counsel recommends that the Commission seek detailed disaggregation of these synergy estimates, and also seek periodic updates that compare forecast to actual synergies achieved regarding the recent CenturyTel-Embarq merger.

The Applicants' assert that the merger will "substantially enhance competition" and allow the company to be "better positioned to serve its customers and adapt to evolving market demand."[45] The Applicants suggest that the merger will benefit current customers in the companies' local markets by creating "a stable provider with the renewed resources to invest in broadband and advanced services consistent with the goals of the National Broadband Plan."[46] The Applicants anticipate that CenturyLink's experience with IPTV can be leveraged to enhance its ability to compete with cable companies offering video and in offering bundles of Internet, voice, and video services.[47] The Applicants describe the result in the following manner:

> The provision of these bundled services will provide an important source of broadband revenue and also will help reduce customer churn, which in turn should allow post-merger CenturyLink to increase broadband investments and deployment. The transaction thus will offer customers in the Applicants' regions meaningful choice for broadband, video, and bundled services, and help to advance a core goal of the National Broadband plan.[48]

According to the Applicants, the benefit to current customers of CenturyLink and Qwest, particularly rural customers, is the expansion of broadband deployment, which will be accelerated due to the combined company's "strong financial position."[49]

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44 / *Id.*

45 / Application, at 10.

46 / *Id.*, at 10-11.

47 / *Id.*, at 11.

48/ *Id.*, at 11.

49 / *Id.*

Currently, CenturyLink has made high-speed Internet access available to 6 million access lines (89% of its total access lines) in its territory. Approximately 96% of the broadband lines in service are at downstream speeds of 1.5 Mbps or greater; 4.3 million access lines "are enabled" at speeds of 3 Mbps or greater; approximately 3.9 million lines "are enabled" at speeds of 6 Mbps or greater; and approximately 2.7 million lines "are enabled" at speeds of 10 Mbps or greater.[50] In Qwest's region, Qwest "has qualified" 86% of the "living units" that its network passes for high-speed Internet access service and approximately 14 million of the "living units" that Qwest's network passes are qualified at 1.5 Mbps or greater (and 8 million are qualified at 5 Mbps or greater).[51] According to the Applicants, the combined financial strength of the company will enable it to "compete more effectively" with large cable companies such as Comcast, Time Warner Cable, Cox and Charter. The Applicants state that they currently compete against these companies, but that post-merger "CenturyLink becomes a more formidable competitor" and "creates a truly nationwide platform for both broadband deployment and for the delivery of next-generation content and services."[52] The combined fiber networks of Qwest and CenturyLink is purported to lead to efficiencies and to reduced backbone and middle mile costs associated with providing residential broadband services.[53]

The Applicants suggest that CenturyLink will be better able to expand IPTV services to consumers post-merger. CenturyLink currently has three markets for IPTV (Columbia, MO; Jefferson City, MO; and La Crosse, WI) and plans to deploy IPTV in

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50 / *Id.*, at 13.

51 / *Id.*

52 / *Id.*, at 14.

53 / *Id.*, at 15.

Qwest markets.[54] The Applicants state: "CenturyLink has already made plans to launch IPTV services in additional major markets, including [BEGIN CONFIDENTIAL] - [END CONFIDENTIAL] and several other former Embarq markets, with expected launch prior to the close of this transaction."

Rate Counsel recommends that the Commission seek detailed and comprehensive supporting documentation regarding the likelihood and full scope of the purported benefits. For example, as Rate Counsel discusses further in these comments, the Commission should seek more detailed information about the expected download and upload speeds of the proposed broadband services, the impact of the transaction on retail service quality, and the impact of the back-to-back acquisitions by CenturyTel of Embarq and Qwest on retail and wholesale customers.

Applicants' description of merger-related risks

The Prospectus that CenturyLink submitted to the SEC earlier this month describes various merger-related risk factors,[55] some of which Rate Counsel addresses below. Rate Counsel urges the Commission to explore further the potential implications of the risk factors set forth in the Prospectus, and to issue information and data requests as may be necessary to enable the Commission to assess the impact of these potential merger risks for consumers.

"No-shop" provision presents a risk

The merger agreement includes "no-shop" provisions that restrict the Applicants' ability to solicit, encourage, facilitate or discuss competing third-party proposals to

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54 / *Id.*, at 15.

55 / *See, e.g.*, Prospectus, at 14-25.

acquire all or a significant part of Qwest or CenturyLink.[56] Other companies could be interested in purchasing part or all of either Applicant's operations, and such interest could translate into higher value for either Applicant's stockholders than the Qwest-CenturyLink merger. For example, as described in the Prospectus, Qwest explored potential opportunities with "Company A"[57] and "Company B."[58] However, the merger agreement prohibits either Applicant from exploring other transactions.

Integration-related expenses pose a risk

CenturyLink likely will incur substantial expenses in order to integrate the Applicants' different business, operations, networks, systems, technologies, policies and procedures.[59] CenturyLink acknowledges that "[t]here are a large number of systems that must be integrated, including billing, management information, purchasing, accounting, finance, sales, payroll and benefits, fixed asset, lease administration and regulatory compliance."[60] Also, because CenturyLink is likely to initiate these integration efforts before it has completed a similar integration with Embarq, "both of these integration initiatives [could] be delayed or rendered more costly or disruptive than would otherwise be the case."[61] Therefore, Rate Counsel urges the Commission to seek substantially more information from CenturyLink about (1) the status of its integration efforts with Embarq (with updated status reports provided on a bi-monthly basis); (2) its plans for minimizing

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56 / Prospectus, at 16.

57 / Prospectus, at 33.

58 / Prospectus, at 34.

59 / Prospectus, at 16.

60 / Prospectus, at 16.

61 / Prospectus, at 16.

disruption to retail consumers; and (3) its plans for minimizing disruption to wholesale consumers.

The two back-to-back mergers seem likely to over-extend the resources that CenturyLink will need to devote to integration efforts.[62] Rate Counsel anticipates that wholesale customers will propose specific recommendations and remedies to the FCC to protect CLECs' transactions with CenturyLink, and, indeed, Rate Counsel supports efforts to ensure smooth wholesale transactions. Individual retail consumers, however, lack comparable resources to seek parallel remedies. Therefore, Rate Counsel is concerned that absent careful review and oversight by the FCC, retail consumers may lack similar protection and therefore could bear the brunt if problems arise during challenging back-to-back integration efforts. Rate Counsel recommends that the Commission examine carefully the implications of these back-to-back mergers on the quality of basic retail service. Rate Counsel notes that CenturyLink has filed for a waiver of the August 2, 2010 deadline for implementing the new one business day porting interval and validations requirement that the Commission previously approved. CenturyLink indicates that it seeks more time because it is in the process of integrating two operating systems as a result of its recent merger with Embarq. *See* In the Matter of Local Number Portability Porting Interval and Validation Requirements, Telephone Number Portability, WC Docket No. 07-244, CC Docket No. 95-116, *Petition for Waiver of Deadline*, June 7, 2010, at 2.

Furthermore, as CenturyLink observes, these complexities and potential disruptions could cause integration expenses that exceed the savings that CenturyLink

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62 / Prospectus, at 44.

anticipates from the elimination of duplicative expenses and the achievement of economies of scale. Therefore, Rate Counsel urges the Commission to compute synergy estimates both with and without the anticipated integration savings.

Risk that the combined company may not be able to integrate the Applicants' separate businesses successfully

The integration of the business practices and operations will consume substantial management attention and resources, which in turn could jeopardize other aspects of the company's operations and business plans. Related risks include:

- Failure to achieve cost savings;
- Lost sales and customers (customers of either company decide not to do business with the combined company);
- Complexities of managing the combined business out of different locations, with different cultures, histories, regulatory restrictions, markets, and customer bases;
- Failure to retain key employees of either company;
- Unknown liabilities, delays, regulatory conditions, and other factors; and
- Performance shortfalls at either or both of the companies resulting from managements' attention to the merger and integration of the companies' operations.[63]

The potential consequences of these risks include harms such as disruptions in the business; distraction of management; and inconsistencies in the combined company's products and services, which could jeopardize relationships with customers, vendors and employees.

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[63] / Prospectus, at 17.

Risk associated with CenturyLink's lack of experience with more urban areas

Before it acquired Embarq, CenturyLink primarily served rural areas and small to mid-size cities. CenturyLink has been operating the more dense markets of Las Vegas and the suburbs of Orlando only since mid-2009.[64] Qwest's markets, by contrast, include substantially denser areas than those traditionally served by CenturyLink and also include such markets as Phoenix, Denver, Minneapolis-St. Paul, Seattle, Salt Lake City, and Portland. If CenturyLink is unable to apply its strategies and operating models to these larger markets, then its business and financial performance could be adversely affected.[65]

Rate Counsel is also concerned that CenturyLink's new focus on urban areas could cause it to devote fewer resources and management attention to the rural areas and small to mid-size cities that it has traditionally served, such as CenturyLink's existing New Jersey markets. Therefore, it is critically important that the FCC assess potential benefits and risks (such as broadband deployment and service quality) for rural communities and mid-size cities separately from those anticipated for urban customers.

CenturyLink would confront various risks post-merger

Rate Counsel does not seek to identify all risks that CenturyLink might confront post-merger, but among the other possible risks are:

- Ability to retain key employees;
- Impact of access line loss on revenues, earnings and cash flow;
- Competition placing pressure on the combined company's market share;

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64 / Prospectus, at 17.

65 / Prospectus, at 17.

- Technological change, which could reduce demand for the combined company's products and services, and require CenturyLink to expend more capital and other resources than it presently plans;
- The challenge of diversification of products and services;
- The possible inability of CenturyLink to continue to grow through acquisitions, which has been its traditional way of growing;
- Effectively managing the expanded operations and achieving the expected operating efficiencies, cost savings, revenue enhancements and synergies;
- Branding and re-branding initiatives will cause costs and it is uncertain how they will be perceived by customers;
- Relationships with other communications companies, which affect, for example, access charge revenues; and
- Network disruptions or system failures.[66]

Regulatory Risks

Also, as CenturyLink observes, regulatory changes, such as access charge and universal service fund changes, present risks. [67] The FCC's efforts to reform universal service funding also could alter CenturyLink's federal subsidies.[68] In 2009 Qwest received \$66 million in federal high cost subsidies,[69] which translates into approximately

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66 / Prospectus, at 17-22.

67 / Prospectus, at 21-22.

68 / *See* In the Matter of Connect America, Fund A National Broadband Plan for Our Future, High-Cost Universal Service Support, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, *Notice Of Inquiry And Notice Of Proposed Rulemaking*, rel. April 21, 2010.

69 / Qwest Communications International, Inc. SEC Form 10-K, filed February 16, 2010, at 10. Qwest also received \$87 million in state universal service high cost funds. *Id.*

$6.83 per line.[70] CenturyLink received $145.3 million in USF high cost loop funding in 2009,[71] which translates into approximately $21.02 per line.[72]

Implications of risks for consumers

These various risks, other risks that are identified in CenturyLink's Prospectus, and the risk to service quality, which Rate Counsel discusses below, merit further investigation by the Commission. These risks could affect the future of the combined company leading to a direct impact on consumers.

CenturyLink should demonstrate that the proposed transaction will lead to improvement in service quality throughout its new footprint and that it will adopt "best practices."

ARMIS data show that over the past ten years, the target of the acquisition, Qwest, consistently demonstrated better service quality in some areas than the acquirer, CenturyLink. The Commission should allow this transaction to proceed only if it can determine that the combination will result in improved service quality for current CenturyLink customers, rather than a decline in service quality for current Qwest customers. In addition, New Jersey Rate Counsel is concerned that CenturyLink's New Jersey customers suffer worse service than other CenturyLink customers in two key measures. As Rate Counsel discusses above, CenturyLink's potential new focus on newly acquired metropolitan areas could divert its attention and resources away from less urban areas including CenturyLink's footprint in New Jersey, further jeopardizing the quality of basic local exchange service for New Jersey's consumers.

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70 / Qwest had 9,663,000 access lines as of December 31, 2009. CenturyLink Form S-4, June 4, 2010, at 11.

71 / CenturyLink SEC Form 10-K filed March 1, 2010, at 18.

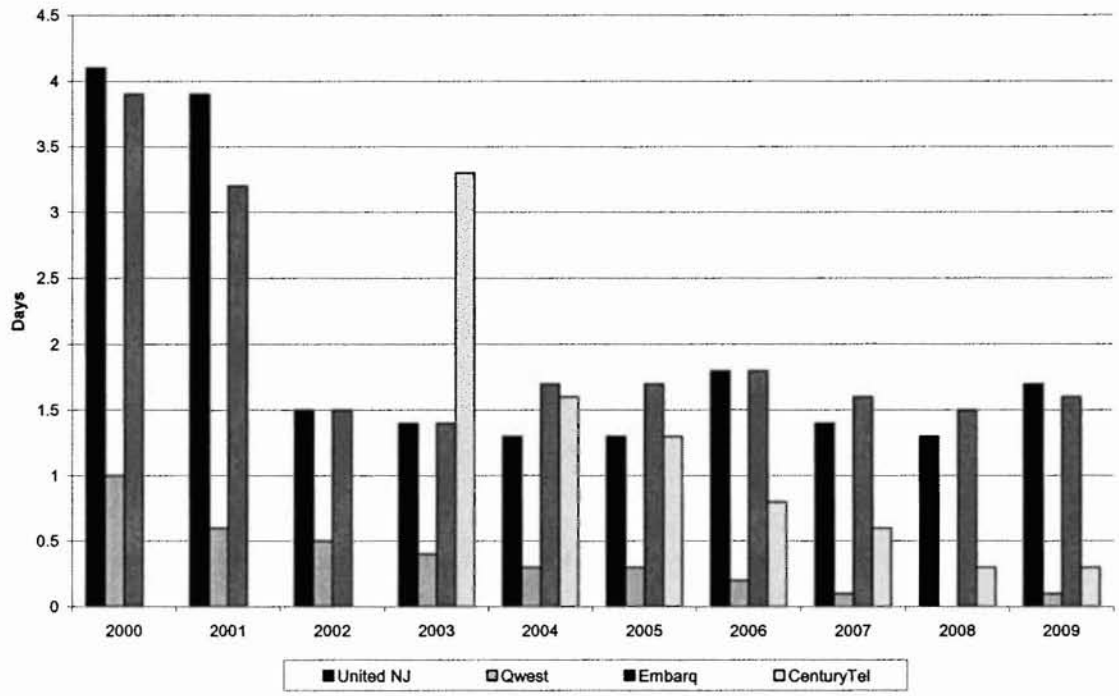
72 / CenturyLink had 6,913,000 access lines as of December 31, 2009. CenturyLink Form S-4, June 4, 2010, at 10.

Before proceeding with its proposed acquisition of Qwest, CenturyLink should be required to show operational success in its recent acquisition of Embarq. More specifically, CenturyLink should show improvement over the performance shown in the FCC's ARMIS data. These data show, for example, that legacy Embarq residential customers wait longer (1.6 days, on average, in 2009) than legacy CenturyTel customers (0.3 days, on average, in 2009) for service installation. Embarq's service installations in New Jersey take even longer, 1.7 days on average in 2009. CenturyLink should be required to explain how it will bring installation intervals in legacy Embarq territory in line with those found in legacy CenturyTel territory, particularly as CenturyLink attempts to integrate the many diverse operations of yet another company. Rate Counsel notes that the acquirer is expanding from about 2 million access lines as of June 2009 to about 16 million in less than two years, [73] an accomplishment that will consume substantial managerial and technical resources.

[73] / The Applicants are working toward a merger completion date of the first half of 2011. Prospectus, at viii.

Figure 1[74]

Average Installation Interval for Residential Customers



ARMIS data also show that both Embarq and CenturyTel consistently have far more initial out of service reports per 100 lines than does Qwest. See Figure 2 below. CenturyLink should explain how it can complete the integration of Embarq, take on the acquisition of Qwest, and play "catch-up" with Qwest in this important service quality metric.

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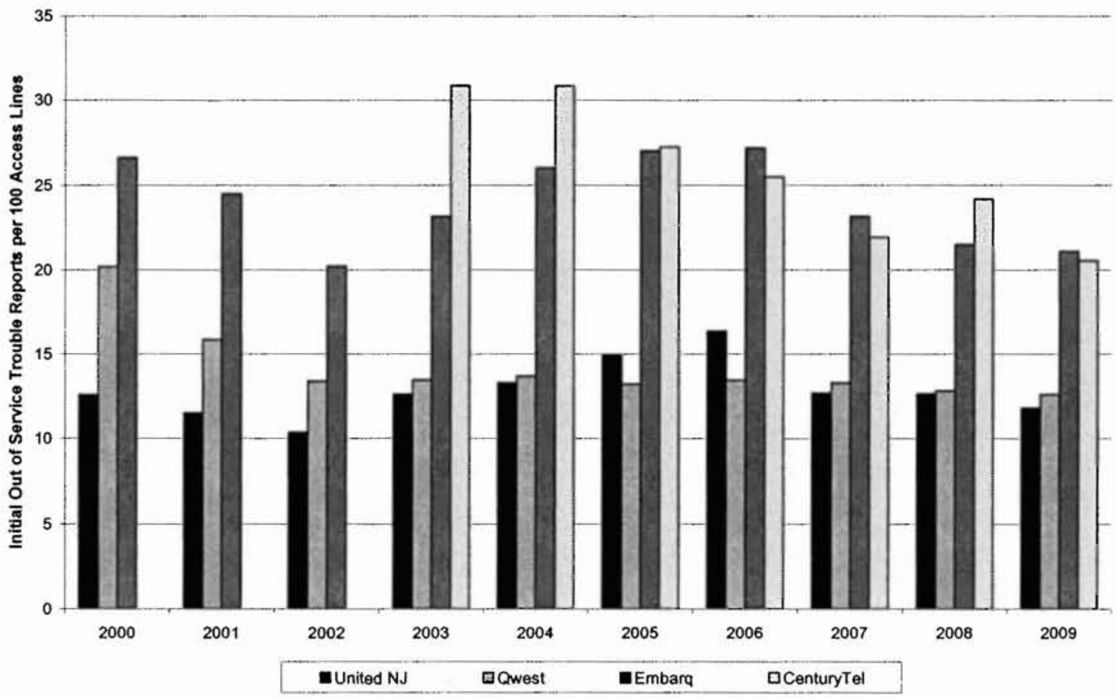
[74] / FCC Report 43-05, the ARMIS Service Quality Report, Table II. Installation and Repair Intervals (Local Service), row 134, data accessed 6/21/2010. In this and following charts, United NJ represents Embarq's (now CenturyLink's) operating company in New Jersey. Results for Embarq and CenturyTel are shown as separate holding companies, prior to their combination as CenturyLink.

Figure 2[75]

Initial Out of Service Trouble Reports per 100 Residential Access Lines

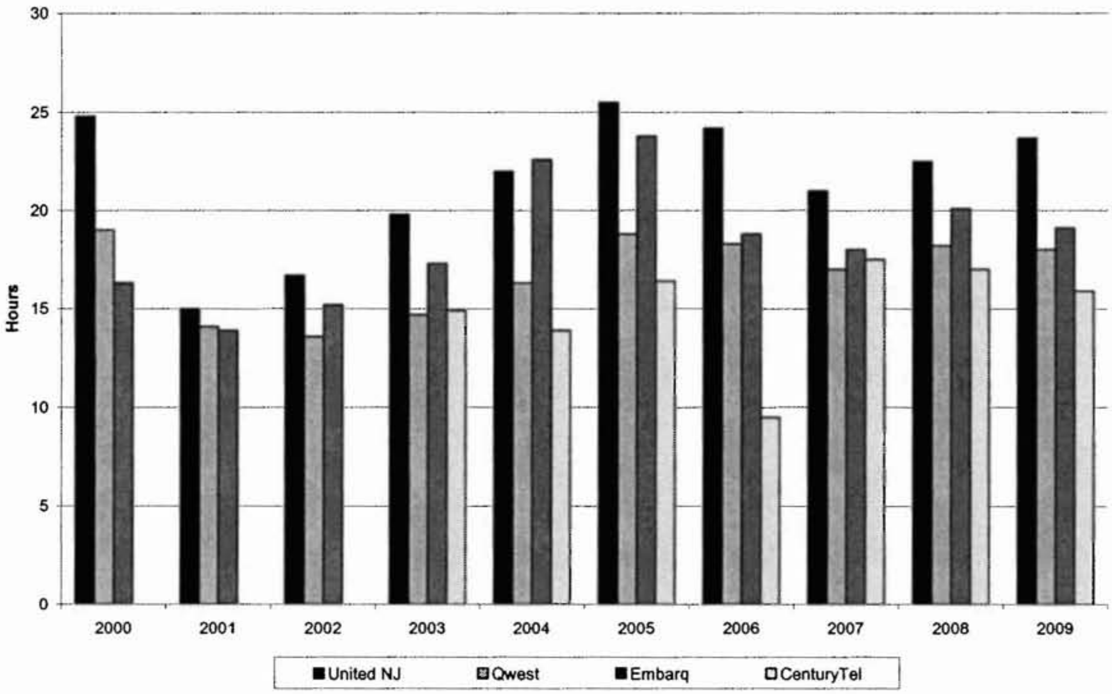


CenturyLink's New Jersey residential customers currently wait longer on average (23.7 hours in 2009) for repairs to be made than other CenturyLink customers (19.1 hours for Embarq customers, and 15.9 hours for CenturyTel customers), and also longer than Qwest customers (18 hours). See Figure 3 below. The Commission should elicit details about the relatively long waits for repairs in New Jersey, and only approve this transaction if CenturyLink can provide a credible plan of improvement.

[75] / FCC Report 43-05, the ARMIS Service Quality Report, Table II. Installation and Repair Intervals (Local Service), rows 140 and 144, data accessed 6/21/2010.

Figure 3[76]

Initial Out of Service Report Interval



CenturyTel's success in reducing the average installation interval from 3.3 days in 2003 to 0.3 days in 2009 demonstrates that service quality improvements are possible. But CenturyLink still has important work to do to improve service quality – namely, reducing out of service reports and shortening repair intervals. The Commission should require CenturyLink to explain in detail how its acquisition of Qwest will benefit current CenturyLink consumers through better service quality, rather than harm current Qwest consumers.

Finally, as Rate Counsel discusses below, the FCC should re-visit its earlier decision to forbear from ARMIS reporting requirements and, at a minimum, condition

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76 / FCC Report 43-05, the ARMIS Service Quality Report, Table II. Installation and Repair Intervals (Local Service), row 145, data accessed 6/21/2010.

any approval of the proposed transaction on CenturyLink's commitment to continue to file ARMIS reports.

III. STANDARD OF REVIEW

The Commission has reviewed numerous mergers among telecommunications and cable companies.[77] In its order issued a year ago, approving the transfer of control from Verizon Communications Inc. ("Verizon") to FairPoint Communications, Inc. ("FairPoint") of Verizon's operations in the northern three New England states, the FCC described its standard of review as follows:

> Pursuant to sections 214(a) and 310(d) of the Act, the Commission must determine whether the proposed transfer of control to FairPoint of certain licenses and authorizations held and controlled by Verizon will serve the public interest, convenience, and necessity. In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Communications Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes. The Commission then employs a balancing test weighing any potential public interest harms of the proposed transaction against the proposed public interest benefits. The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest. If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we may designate the application for hearing.
>
> Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act," which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing the spectrum in the public interest. Our public interest

77 / Rate Counsel has participated in many of these proceedings. *See footnote **, supra.*

> analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers. In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.
>
> In determining the competitive effects of the merger, our analysis is informed by, but not limited to, traditional antitrust principles. The Commission is charged with determining whether the transfer of control serves the broader public interest. In the communications industry, competition is shaped not only by antitrust principles, but also by the regulatory policies that govern the interaction of industry players. In addition to considering whether the merger will reduce existing competition, therefore, we also must focus on whether the merger will accelerate the decline of market power by dominant firms in the relevant communications markets and the merger's effect on future competition. We also recognize that the same consequences of a proposed merger that are beneficial in one sense may be harmful in another. For instance, combining assets may allow the merged entity to reduce transaction costs and offer new products, but it may also create or enhance market power, increase barriers to entry by potential competitors, and/or create opportunities to disadvantage rivals in anticompetitive ways.
>
> The Commission has the authority to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the transaction serves the public interest. Indeed, our public interest authority enables us to impose and enforce conditions based upon our extensive regulatory and enforcement experience to ensure that the merger, overall, will serve the public interest. Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the Commission's responsibilities under the Communications Act and related statutes.[78]

Furthermore, the Applicants bear the burden of demonstrating to the FCC that the benefits of the proposed transaction outweigh the potential harm.[79]

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78 / In the Matter of Applications Filed for the Transfer of Certain Spectrum Licenses and Section 214 Authorizations in the States of Maine, New Hampshire, and Vermont from Verizon Communications Inc. and its Subsidiaries to FairPoint Communications, Inc., WC Docket No. 07-22, Memorandum Opinion and Order, released January 9, 2008 ("FCC FairPoint/Verizon Order"), at paras. 11-14 (cites omitted).

79 / The FCC has stated: "Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transfer outweigh the potential

IV. ANALYSIS OF PUBLIC INTEREST OF PROPOSED TRANSACTION

A. OVERVIEW

The proposed transaction raises numerous economic and policy issues that bear directly on consumers in New Jersey and throughout the country. These initial comments provide a preliminary analysis and discussion of the public interest aspects of the proposed transaction, including the probability of the purported consumer benefits occurring, the scope of the benefits, and whether the anticipated benefits offset any potential harm that could result from the transaction. Based on a review of the Applicants' submission of additional information and data to the Commission, Rate Counsel may supplement its analysis and recommendations in future filings with the FCC.

B. COMMITMENTS AND CONDITIONS

If the Commission approves CenturyLink's acquisition of Qwest, it should do so contingent upon enforceable conditions that mitigate risks for consumers and increase the likelihood that consumers experience benefits. Rate Counsel recommends that:

- The FCC, state public utility commissions, competitors, and consumers can readily monitor the Applicants' compliance and the FCC can enforce them.
- The conditions do not sunset, but rather only terminate based upon an affirmative finding by the FCC that they are longer necessary. The

public interest harms." FCC FairPoint Verizon Order, at para. 26 citing AT&T/BellSouth Order, 22 FCC Rcd at 5761, para. 201; SBC/AT&T Order, 20 FCC Rcd at 18384, para. 183; Verizon/MCI Order, 20 FCC Rcd 18530, para. 194; Echostar/DirecTV Order, 17 FCC Rcd at 20630, para. 188; SBC/Ameritech Order, 14 FCC Rcd at 14825, para. 256; see also Bell Atlantic/NYNEX Order, 12 FCC Rcd at 20063, para. 157. See FCC FairPoint/Verizon Order, at paras. 26-28 for general discussion of the FCC's approach to conducting this analysis.

Applicants should bear the burden of proving that the conditions are no longer necessary.

As a threshold matter, the FCC should issue immediately a discovery request asking whether CenturyLink would be willing to commit to the conditions set forth in the FCC's 2009 Order approving the merger of CenturyLink and Embarq[80] and secondly seeking detailed documentation demonstrating the Applicants' ability to do so. An assessment of the ability and willingness of CenturyLink to abide by the conditions in the CenturyTel/Embarq proceeding is a bare minimum requirement. In other words, consumers in the CenturyLink and Qwest territories are entitled to at least the same level of protection against possible harm and the same level of potential benefits as are consumers in the newly acquired Embarq territory. Furthermore, the Commission should determine whether CenturyLink is meeting the conditions as approved in the 2009 CenturyTel/Embarq Order before considering the current proposed transaction.[81] Finally, the Commission should issue a discovery request asking whether CenturyLink will commit to broadband conditions over and above the CenturyTel/Embarq conditions as outlined in detail below.

Minimum Broadband Committments:

The Applicants suggest that the merger will benefit current customers in the companies' local markets by creating "a stable provider with the renewed resources to invest in broadband and advanced services consistent with the goals of the National

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80 / In the Matter of Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc., FCC WC Docket No. 08-238, *Memorandum Opinion and Order*, June 25, 2009 ("CenturyTel/Embarq Order"), at Appendix C: Conditions.

81 / The proposed transaction is a merger and not a sale of assets – so the FCC should be guided by recent sales transactions (Frontier, FairPoint) only as is appropriate, but the merger transactions may in some instances be more relevant (CenturyTel/Embarq and AT&T/BellSouth).

Broadband Plan"[82] and will the benefit rural customers through expanded broadband deployment.[83] The Applicants state:

> . . . CenturyLink is committed to universal broadband deployment, and the combination of its facilities with those of Qwest, as discussed above, will significantly improve the availability of broadband capabilities to both companies' rural customer bases. CenturyLink is on track to meet or exceed its FCC broadband deployment and CLEC commitments; as of March 31, 2010, the company is approaching 89 percent broadband availability (in all but the most difficult-to-serve areas in its region).[84]

CenturyLink is confident that the transaction will "strengthen the balance sheet" and improve the investment potential of the network[85] and is already committed to providing 100% deployment to "broadband-eligible" access lines by mid-2012.[86]

The Commission recently approved the CenturyTel/Embarq merger conditioned upon their agreement to offer retail broadband Internet access service to 100% of its broadband eligible access lines within three years after the closing of the transaction.[87] The Commission should similarly require CenturyLink to expand the commitment to offer retail broadband Internet access to 100% of its broadband eligible access lines[88] within three years after the closing of the transaction to the newly acquired Qwest territories. However, the conditions of the CenturyTel/Embarq merger with regard to speed are insufficient. As stated by Acting Commissioner Michael J. Copps at the time of the approval of the CenturyTel/Embarq merger: "This particular commitment goes

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82 / Application, at 10-11.

83 / *Id.*

84 / Application, at 20. The Commission should examine how the "difficult-to-serve areas" are defined.

85 / Application, at 20.

86 / Application, at 37 citing the *CenturyTel/Embarq Merger Order*, Appendix C.

87 / CenturyTel/Embarq Order, at Appendix C: Conditions.

88 / Defined as "retail single-line residential and single-line business access lines."

significantly beyond the commitments of previous mergers, but it should not be construed as ideal. It should be regarded by no one as a standard or indicative of what to expect from the Commission when it considers future mergers or, for that matter, the national broadband plan that the Commission is currently pursuing."[89] CenturyTel, as a condition of its merger with Embarq, committed to deploy broadband to 100% of broadband eligible lines within three years of the merger at a minimum download speed of 768 Kbps to 90% of broadband eligible access lines within three years (the remaining broadband availability to be achieved by alternative technologies). The Companies further committed to deploy broadband at 1.5 Mbps (download) to 87% to broadband eligible access lines within two years and broadband at 3.0 Mbps (download) to 75% of broadband eligible access lines within one year; 78% within 2 years; and 80% within three years.

Rate Counsel commends the Commission for adopting conditions for CenturyTel that require 100% broadband availability. However, the conditions of the CenturyTel/Embarq merger fail to meet the goals of the National Broadband Plan. The National Broadband Plan put forth a National Broadband Availability Target of 100% access to actual download speeds of 4 Mbps and actual upload speeds of 1 Mbps.[90] Indeed, the National Broadband Plan also outlines a long-term goals of 100 million U.S.

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[89] / CenturyTel/Embarq Order, Statement of Acting Commissioner Michael J. Copps.

[90] / Federal Communications Commission, *Connecting America: The National Broadband Plan*, report submitted to the U.S. Congress, March 17, 2010 ("National Broadband Plan"), at Chapter 8, 135. The American Recovery and Reinvestment Act of 2009 ("ARRA") was signed into law on February 17, 2009. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("ARRA"). As part of the Broadband Technology Opportunities Program established by the ARRA, the FCC was required to develop a National Broadband Plan by February 17, 2010. The FCC requested an extension of that deadline in January, 2010. See, Letter to Honorable John D. Rockefeller, Chairman, Committee on Commerce, Science and Transportation, United States Senate from Julius Genachowski, Chairman, Federal Communications Commission, January 7, 2010.

homes with affordable access to download speeds of at least 100 Mbps and upload speeds of at least 50 Mbps by 2020 (and, as a "milestone" 50Mbps/20Mbps by 2015).[91] Therefore, the Commission should, at a minimum, require that the Applicants meet the speed targets imposed upon Frontier as a condition of the sale of Verizon's local exchange operations to the Company, which comport with the Availability Target of the National Broadband Plan.[92] Frontier must provide 70% of housing units in its territory with 4Mbps/1Mbps broadband service at the end of 2012 increasing to 85% of housing units by the end of 2015.[93] Similarly, the Commission should adopt the conditions with respect to broadband reporting that it adopted in approving the Frontier/Verizon transaction.[94] Rate Counsel urges the Commission to require that any reports furnished to the Commission as to broadband deployment progress also be furnished to State Commissions and consumer advocates. Rate Counsel also supports the condition adopted in the Frontier/Verizon transaction that limited the use of new broadband USF funding to areas not served by competitors.[95]

Commitments for ARMIS Reporting:

The Commission should also re-impose Automated Reporting Management Information System ("ARMIS") reporting on CenturyLink for its applicable operating companies. Rate Counsel recommends that the Commission condition the approval of the transaction on obtaining the follow commitments from CenturyLink with respect to ARMIS

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91 / National Broadband Plan, at xiv, 9.

92 / Frontier-Verizon Order, Appendix C, at 30. Rate Counsel notes, however, that the Verizon-Frontier Conditions did not require 100% availability at those speeds.

93 / Frontier-Verizon Order, Appendix C, at 30.

94 / Frontier-Verizon Order, Appendix C, at 31.

95 / Frontier-Verizon Order, Appendix C, at 32.

reporting. Depending on the individual operating company, the Company should be required to file commencing with the 2009 reporting year:

- ARMIS Reports 43-01, 43-02, and 43-03[96]
- ARMIS Reports 43-07 and 43-08[97]
- ARMIS Reports 43-05 and 43-06[98]
- ARMIS Report 43-04, 495A, and 495B.[99]

The public interest will be furthered by ensuring that the public, state commissions and consumer advocates will have access to information necessary to track the commitment for broadband deployment by CenturyLink and ensure that each company continues to be financially viable and maintaining a level of service to the public including consumer protection, and competition.

Commitments for Operation Support Systems/Wholesale:

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96 / Under the December 12, 2008 ARMIS Financial Reporting Forbearance Order, the Commission decided to forbear from the requirement that AT&T, Qwest, and Verizon file ARMIS Reports 43-01, 43-02, 43-03. However, these three carriers must continue to file pole attachment data, formerly filed on ARMIS Report 43-01, annually in WC Docket No. 07-204. Forbearance from ARMIS Report 43-01 was not extended to any other ILEC.

97 / In the ARMIS Forbearance Order, the Commission granted conditional forbearance for filing ARMIS Report 43-07 in its entirety and from filing the remaining tables in ARMIS Report 43-08 but required carriers to collect and retain the data for these reports for 24 months after September 6, 2008. The Commission should re-impose reporting and extend the filing of these reports until the Commission orders that such reports no longer need to be filed. In its Forbearance Order issued on September 6, 2008, the FCC included a notice of proposed rulemaking that sought comment on the scope of information that it should collect on an industry-wide basis, yet the FCC has failed to act. ARMIS Forbearance Order, paras, 33-36.

98 / In the ARMIS Forbearance Order, the Commission granted conditional forbearance for filing ARMIS Reports 43-05 and 43-06 provided that the carriers file the data voluntarily for 24 months after September 6, 2008. The Commission should re-impose the filing of these reports for CenturyLink (as applicable to its individual operating companies) and require the filing of these reports until the Commission orders that such reports no longer need to be filed.

99 / In its April 24, 2008 AT&T Cost Assignment Forbearance Order, the Commission relieved AT&T from filing ARMIS Reports 43-04, 495A, and 495B, subject to Wireline Competition Bureau (Bureau) approval of a compliance plan submitted by AT&T. In the September 6, 2008 ARMIS Forbearance Order, the Commission extended the same relief to Verizon and Qwest, subject to Bureau approval of compliance plans submitted by these companies. Subsequently, on December 31, 2008, the Bureau approved compliance plans submitted by AT&T, Verizon, and Qwest.

The Commission, should, at a minimum, condition approval of the proposed merger upon the maintenance of service levels that Qwest is currently providing for wholesale operations. As a condition of the CenturyTel/Embarq merger, CenturyTel was required to "integrate, and adopt for CenturyTel CLEC orders, the automated Operation Support Systems ("OSS") of Embarq within fifteen months of the transaction's close."[100] The Commission should ensure that this has been completed.

Additionally, as Rate Counsel, in joint comments with the National Association of State Utility Consumer Advocates ("NASUCA") recommended in the Frontier/Verizon transaction, the Applicants should be required to engage an independent third-party to audit and test the operating systems used to provide wholesale and retail services. "Such an audit would let all parties know whether the actual transfer of customers and related information would pose undue risk to ratepayers."[101]

Finally, the Applicants should commit to forgo filing any forbearance petition, for a period of 12 months after closing, that "seeks to alter the current status of any facility currently offered as a loop or transport UNE under Section 251(c)(3) of the Act or to request any new pricing flexibility for special access services in any market."[102]

Commitments for Employment/Pension:

The FCC and state regulators should examine the impact of the proposed transaction on employment and on the Applicants' ability to meet their pension

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[100] / CenturyTel/Embarq Order, Appendix C.

[101] / In the Matter of Applications filed by Frontier Communications Corporation and Verizon Communications Inc. for Assignment or Transfer of Control, WC Docket No. 09-95, Comments of the National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel, September 21, 2009, at 28.

[102] / CenturyTel/Embarq Order, Appendix C.

obligations. The FCC should also explore the impact, if any, on CenturyLink of the possible exhaustion of the $5 billion fund set aside by the health overhaul bill to offset the cost of health benefits for early retirees, and whether additional funds will be coming to the combined entity as a result of companies' ability to apply for a portion of the $5 billion fund. [103]

Additional conditions may be warranted

The impositions of the conditions discussed above are the minimum conditions necessary to have the transaction found to be in the public interest. Based upon further review of the transaction, including the comments filed by other parties, Rate Counsel may recommend further conditions be imposed. Rate Counsel appreciates the opportunity to provide its initial comments on this matter.

V. CONCLUSION

Rate Counsel submits that the proposed transaction must be thoroughly reviewed by the Commission to address whether the proposed transaction would serve the public interest, convenience and necessity. In this regard, the Commission and parties to this proceeding must have access to all books of account, documents, data and records pertaining to the transaction in order to assess whether the transaction is likely to generate verifiable, merger-specific public interest benefits. The impositions of the conditions discussed above are the minimum conditions necessary to have the transaction found to be in the public interest. Based upon further review of the transaction, including the comments filed by other parties, Rate

[103] / "Employees Race for Retirement Funds," Janet Adamy, *Wall Street Journal*, June 16, 2010.

Counsel may recommend further conditions be imposed. Rate Counsel appreciates the opportunity to provide its initial comments on this matter.

Respectfully submitted,

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