

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

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| In the Matter of                          | ) |                      |
|                                           | ) |                      |
| Qwest Communications International, Inc., | ) |                      |
| Transferor, and CenturyTel, Inc. d/b/a    | ) | WC Docket No. 10-110 |
| CenturyLink, Transferee, Application for  | ) |                      |
| Transfer of Control Under Section 214 of  | ) |                      |
| the Communications Act, as Amended        | ) |                      |

**REPLY COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation (“Sprint”) respectfully submits its Reply Comments in the above-captioned proceeding pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice regarding the proposed transfer of control of Qwest Communications International, Inc. (“Qwest”) to CenturyTel, Inc. d/b/a CenturyLink (“CenturyLink”).<sup>1</sup> Sprint agrees with the comments of several parties that the proposed merger of Qwest and CenturyLink has the potential to cause substantial harm to the telecommunications marketplace and that the parties have failed to demonstrate a corresponding public benefit. Sprint also agrees that the merger should be conditioned in a manner similar to that done in prior transactions of this magnitude to protect competition and the public interest.<sup>2</sup>

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<sup>1</sup> Public Notice, Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc., d/b/a CenturyLink for Consent to Transfer of Control, DA 10-993 (rel. May 28, 2010).

<sup>2</sup> See, Comments of Sprint Nextel Corporation, WC Docket No. 10-110 (July 12, 2010) (“Sprint Comments”) Attachment II.

**I. THE APPLICANTS HAVE FAILED TO DEMONSTRATE THE PROPOSED MERGER IS IN THE PUBLIC INTEREST**

COMPTEL,<sup>3</sup> the Joint Commenters,<sup>4</sup> and the Cbeyond group<sup>5</sup> argue that Qwest and CenturyLink have failed to demonstrate that the proposed merger is in the public interest and that the petitioners have failed to carry their required burden of proof. Sprint is in agreement with these comments.<sup>6</sup>

**A. The Larger Footprint of the Merging Companies Increases the Incentive and Ability of the Merged Firm to Discriminate and Harm Customers and Competition**

As the Cbeyond group correctly notes, the Commission has previously found that even a smaller merger involving CenturyTel had the potential to “result in anticompetitive behavior on the part of the applicants” because of the significant increase in the footprint of a dominant incumbent.<sup>7</sup> Because this proposed merger would more than double CenturyLink’s footprint, the risk of anticompetitive conduct is even greater. Both CenturyLink and Qwest are dominant incumbents in their respective territories, as Cbeyond confirms.<sup>8</sup> Cbeyond’s comments are consistent with Sprint’s experience. The unavailability of competitive facilities combined with anticompetitive volume and term requirements<sup>9</sup> has resulted in Sprint purchasing at least 95% of its DS1 circuits in territory from Qwest and CenturyLink.

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<sup>3</sup> Comments of COMPTEL, WC Docket No. 10-110 (July 12, 2010) at 2-5.

<sup>4</sup> Comments of Joint Commenters, WC Docket No. 10-110 (July 12, 2010) at 6-13. The “Joint Commenters” are Access Point, Inc., Covad Communications Company, Deltacom, Inc., Granite Telecommunications, LLC, HickoryTech Corporation (d/b/a HichoryTech and Enventis), Metropolitan Telecommunications, Inc., OrbitCom, Inc., PAETEC Holding Corp., TDS Metrocom, LLC, and U.S. TelePacific and Mpower Communications Corp. both d/b/a TelePacificCommunications.

<sup>5</sup> Comments of Cbeyond, Integra Telecom, Socket Telecom, and tw telecom, WC Docket No. 10-110 (“Cbeyond group”) (July 12, 2010) at 66-70.

<sup>6</sup> Sprint Comments at 1-3.

<sup>7</sup> Cbeyond group comments at 49 quoting from *In re Applications Filed for the Transfer of Control of Embarq Corporation to CenturyTel, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd, 53276, ¶33.

<sup>8</sup> Cbeyond Comments at 50-52.

<sup>9</sup> Sprint Comments at 8-9.

Increasing the footprint of Qwest and CenturyLink also impacts the advanced services and interexchange markets, as noted by the Joint Commenters.<sup>10</sup> The new entity will have an increased incentive to discriminate against the termination of competitors' calls in order to induce end users to choose the ILEC for its advanced services and interexchange needs. The Commission has previously found that this increased incentive can "result in a public interest harm" in the combined area, ultimately forcing consumers to "pay more for retail services, with reduced quality and choice."<sup>11</sup> The Joint Commenters correctly observe that the merged entity will have both an increased ability and an increased incentive to discriminate, creating significant public interest harms.<sup>12</sup>

**B. The Merged Entity Has the Ability and Incentive to Discriminate in Multiple Ways**

As Sprint noted in its opening Comments, the Merged Entity will retain monopoly pricing power in the special access and switched access markets.<sup>13</sup> As a holding company, the larger CenturyLink can use this pricing power to leverage control over the retail interexchange, enterprise and special access markets. In those markets, the holding company faces the incremental cost of access while its competitors must include the monopoly profits the holding company extracts from its access charges in their retail prices. This differential creates a discriminatory system where competitors must pay more than the holding company for access to customers. This in turn reduces competition and artificially inflates costs to consumers.

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<sup>10</sup> Joint Commenters at 29-30.

<sup>11</sup> *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee*, CC Docket No. 94-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶186 (1999) ("*SBC/Ameritech Merger Order*").

<sup>12</sup> Joint Commenters at 30.

<sup>13</sup> Sprint Comments at 4, 10-11.

The merged entity may also have an incentive to discriminate in the OSS capabilities available to holding company affiliates as compared to competitors. Previous mergers highlight that failure to provide adequate merged OSS systems can harm competition.<sup>14</sup> Given CenturyLink's failure to provide an adequate OSS experience for wholesale customers or a commitment to upgrade its systems in a timely manner, the Commission should scrutinize the merged entities plans for future OSS systems closely.<sup>15</sup> To date, the merger parties have not indicated what OSS systems they intend to use in the future so there is risk that current, superior systems will be abandoned and systems that provide inferior performance for wholesale customers will be adopted for the combined entity.

The merged entity may also adopt the worst practices of the two merging parties in order to disadvantage competitors. For example, CenturyLink has a limit of 10 circuit migrations a day for carrier customers. Qwest has a limit of 50. Sprint has found the CenturyLink limit to be too restrictive and it harms Sprint's ability to compete and offer services in an efficient manner. The merged entity should be required to adopt best practices rather than be allowed to harm competition by adopting worst practices. In this instance, both CenturyLink and Qwest should be required to allow 50 circuit migrations a day, for a total of 100 per day, in order to meet the public interest and facilitate competition.

The merged entity will also have the ability to discriminate by creating different prices, terms and conditions for the same functionality in different operating areas of the company. As Cox and Charter observed, CenturyLink will nearly double its previous

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<sup>14</sup> Cbeyond Comments at 21-26.

<sup>15</sup> *Id.* at 26-31.

size but continues to argue for “rural company” status and uses “17 operating entities in Wisconsin, 9 in Louisiana, 7 in Arkansas and 5 in Missouri.”<sup>16</sup> These separate operating territories are used to impose discriminatory prices and interconnection terms and conditions for various regions.

Finally, the merged company will have an incentive to impose additional costs on its competitors by requiring multiple negotiations and arbitrations to establish interconnection agreements with each of these entities, as well as significant contract management expenses. By imposing multiple contracts that differ in form and content, the merged entity will have the ability to increase costs to competitors that must administer these contracts nationally.

**C. The Merger Parties Currently Exercise Market Power in the Special Access and Switched Access Markets**

Sprint agrees with the Joint Commenters that Qwest and CenturyLink exercise market power in the special access market.<sup>17</sup> The market has failed to control this market power as is evidenced by the increase in special access prices by Qwest and Century Link and the supracompetitive profits that the firms earn on their special access investments.<sup>18</sup> Qwest and CenturyLink also exercise market power in the switched access market. When an interexchange call is terminated to a Qwest or CenturyLink customer, there is no alternative to using the switched access services of Qwest or CenturyLink to complete

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<sup>16</sup> Comments of Cox Communications and Charter Communications, Inc., WC Docket No. 10-110 (July 12, 2010) (“Cox and Charter Comments”) at 16-17.

<sup>17</sup> *Id.* at 59-61.

<sup>18</sup> Sprint Comments at 4, 7-8, and Attachment 1 and Cbeyond Comments at 59-60.

the call. There is a perfect monopoly on a terminating basis. The prices of Qwest and CenturyLink for terminating access reflect supracompetitive returns.<sup>19</sup>

## II. MERGER CONDITIONS ARE REQUIRED

Sprint agrees with COMPTTEL, the Joint Commenters, the Cbeyond group, and Cox and Charter, that merger conditions are required in order for this merger to meet the public interest test.<sup>20</sup> Sprint is supportive of each area in which merger commitments are proposed by the parties noted above. Sprint also agrees that the merger conditions should address the shortcomings that became apparent as carriers attempted to enforce the *AT&T/BellSouth Merger Commitments*.<sup>21</sup> This is particularly true of the AT&T Commitment aimed at reducing transaction costs through the porting of interconnection agreements.<sup>22</sup>

Charter notes that AT&T's actions in fighting porting and adoption of interconnection agreements "frustrated the very objective of the conditions – to reduce transaction costs."<sup>23</sup> Sprint's experience is identical. AT&T fought porting and adoption ferociously before multiple state commissions and in the courts. AT&T also fought extending existing agreements per the terms of the merger commitment. The result was as Charter noted, a frustration of the objective to reduce transaction costs.

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<sup>19</sup> The Commission has previously found it reasonable to use \$.0007 per minute as cost of terminating a call, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 and CC Docket No 99-68, 16 FCC Rcd 9151 (2001). In contrast, for example, in Washington Sprint calculates that it paid in 2008 Qwest \$.0034, CenturyLink (Embarq) \$.0054 and CenturyLink (CenturyTel) \$.0083 per minute for interstate termination and Qwest \$.0197, Century Link (Embark) \$.0421 and CenturyLink (CenturyTel) \$.0723 per minute for intrastate termination. The spread between the cost of this termination and the price of termination highlights the supracompetitive pricing of Qwest and CenturyLink.

<sup>20</sup> Cbeyond Comments at 70, Joint Commenters at 42-74, and COMPTTEL Comments at 5-10.

<sup>21</sup> See *AT&T Inc. and BellSouth Application for Transfer of Control*, Memorandum Opinion and Order, Appendix F, 22 FCC Rcd 5662.

<sup>22</sup> *Id.* at Appendix F, Reducing Transaction Costs Associated with Interconnection Agreements.

<sup>23</sup> Cox and Charter Comments at 10.

Sprint has proposed language intended to remove any ambiguity surrounding this condition and to clarify that it may be enforced by the Commission, a state commission, or a court. Further, to incent Qwest and CenturyLink to promote the objective of this condition, Sprint proposes that where Qwest and CenturyLink oppose porting, adoption, or extension of contracts and lose in their opposition, they pay the attorneys fees of the party seeking to enforce the merger commitment and become subject to a doubling of the term of such agreement at the option of the requesting interconnector.<sup>24</sup>

### **III. THE COMMISSION SHOULD ADDRESS THE FAULTY ECONOMIC INCENTIVES THAT LEAD TO BILLING DISPUTES**

Pac-West Telecomm complains that Qwest and CenturyLink have disputed Pac-West access bills and asks the Commission to enforce their charges. While Sprint does not attempt to assess the specific claims of Pac-West Telecomm, it understands that this dispute may be based upon a more fundamental issue of “access stimulation” or “traffic pumping.” To the extent this is the case, Sprint suggests that the FCC should focus on resolving the underlying problems associated with intercarrier compensation rather than a specific billing dispute between two parties.

Sprint has experienced a great deal of access “traffic pumping” by CLECs and ILECs looking to arbitrage the access charge system. Access pumpers provide services to third parties far below cost or for free and reap a handsome reward by charging other carriers a terminating access fee that covers not only their cost but a significant profit. Frequently these schemes involve revenue sharing arrangements and other indicators that they are nothing more than arbitrage of an antiquated intercarrier compensation system. Access charges that greatly exceed actual costs are the fundamental cause of these access

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<sup>24</sup> Sprint Comments at Attachment 2 condition IV.

pumping schemes and it is these underlying causes that the FCC should attempt to resolve.

Sprint believes that access charges should be reformed to align market incentives with cost. This would require Qwest and CenturyLink to reduce their switched access charges to cost and require competitive carriers to mirror those charges. This would create a market with sound market incentives, discourage business cases built on false economics, and provide a firm foundation for the future. The Commission can cure this problem in Qwest and CenturyLink areas by requiring that all switched access charges be reduced to cost.

#### **IV. CONCLUSION**

The proposed merger of Qwest and CenturyLink will result in a substantially larger carrier with increased incentives to abuse its market power in the special access, switched access and enterprise markets. To mitigate these problems, the merger should be conditioned as Sprint, the Cbeyond group, the Joint Commenters, COMPTTEL, and Cox and Charter propose.



Respectfully submitted,

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