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January 12, 2011

Via Electronic Filing

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

Re: *Applications Filed by Qwest Communications International Inc. and CenturyTel, Inc. d/b/a/ CenturyLink for Consent to Transfer of Control, WC Docket No. 10-110*

Dear Ms. Dortch:

The Applicants write in response to tw telecom's recent filing in the above-captioned proceeding, dated January 5, 2011, in which tw telecom alleges a variety of harms that it claims would occur if this transaction were approved without a number of onerous conditions. For the reasons explained below and in the Applicants' prior filings in the record of this proceeding, tw telecom's allegations are based on hypothetical harms and incorrect assumptions rather than on any evidence in the record. tw telecom also raises an issue arising solely out of its own negotiations with Qwest, that neither is merger-specific nor implicates any broader competitive concerns. tw telecom's filing thus raises no justification for the Commission to impose conditions on its approval of this transaction.

I. THE APPLICANTS HAVE DEMONSTRATED THAT THIS TRANSACTION WILL SERVE THE PUBLIC INTEREST WITHOUT HARM TO COMPETITION

As the Commission is aware, the Applicants have reached settlement agreements with the staff of the state commissions in Arizona, Colorado, Oregon, and Washington, with a number of state agencies and public advocates, with several CLECs including Integra, Cox, and 360networks, and with various other interested parties. Seventeen states and the District of Columbia have approved the merger. A number of these have approved the settlement agreements and concluded that the proposed merger will serve the public interest, in part, on the basis of the conditions included in those agreements. Most of these settlement agreements directly address the topics that tw telecom raises. Thus, to the extent that tw telecom raises any merger-specific concerns, the Applicants believe that their existing settlement agreements fully resolve them. In light of these amply sufficient settlement agreements that are a matter of public record, it is unnecessary for the Commission to add superfluous, restrictive conditions to address tw telecom's alleged, hypothetical harms. Of course, the Applicants are ready and willing to discuss with any CLEC, including tw telecom, any concerns they may have.

II. TW TELECOM'S ASSERTION THAT THE MERGED COMPANY WILL HAVE INCREASED INCENTIVES TO DISCRIMINATE IS BASED SOLELY ON CONJECTURE AND IS WRONG IN FACT

Much of tw telecom's pleading rests on speculation. For example, tw telecom simply asserts that the merged company will have "increased incentive to harm competitors," and will "have the opportunity to act" on those incentives.¹ tw telecom points to nothing in the record that would support its assertion. To the extent that tw telecom simply is recycling its "big footprint" argument that the Applicants necessarily will engage in discrimination simply because they will be bigger, that theory has no particular application to this transaction and has never been the basis for the Commission to impose burdensome conditions. tw telecom does not cite a single concrete example of how the combined company operating in more markets, many of which are rural, would increase the merged company's incentives to discriminate any more than each applicant would have now. Just as in AT&T/BellSouth, "commenters present no rigorous theoretical model that generates even a rough estimate of the merger's incremental impact on [the merging parties'] incentive to discriminate."²

Moreover, tw telecom's speculative harms are especially unlikely in this merger given the complementary nature of the applicants' networks. There are virtually no overlaps anywhere in the Applicants' territories, and thus there will remain substantial and robust competition that will discipline the merged company's activities. Indeed, a major benefit of this transaction is that it will create a stronger competitor to much larger market leaders such as AT&T, Verizon, and Comcast. The transaction thus will enhance competition, not harm it.

To be clear, there will be no degradation of service as a result of the merger. CenturyLink has well-established and proven integration processes that will ensure that all systems and operational tasks are executed seamlessly. CenturyLink also already has identified and named qualified employees from both Qwest and CenturyLink (in roughly equal numbers) who will fill key positions, and ensure that the merged company has the necessary skill sets to serve wholesale customers without disruption. tw telecom did not (and could not) show otherwise. tw telecom's assertions about harm to wholesale customers thus are unfounded.

III. TW TELECOM RAISES MATTERS THAT ARE NOT MERGER-SPECIFIC BUT THE SUBJECT OF ITS PRIVATE NEGOTIATIONS WITH QWEST, AND THUS INAPPROPRIATE FOR THE FCC TO RESOLVE IN THIS DOCKET

A number of the issues raised by tw telecom simply have nothing to do with this transaction. According to tw telecom, its primary concerns are (1) its individual special access negotiations with Qwest, and (2) its desire to renew its peering arrangement with Qwest for Internet backbone traffic. Neither of these concerns is merger-specific. Moreover, neither of

¹ Letter from tw telecom Jan. 5, 2011, WC Docket No. 10-110, at 2 ("tw telecom letter").

² *AT&T, Inc. and BellSouth Corp. Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, ¶ 185 (2007).

these issues raises any concerns about harm to *competition*, as opposed to the interests of one party.

A. It is Unnecessary and Inappropriate For the Commission to Address Special Access In the Narrow Context of This Merger Proceeding

tw telecom speculates about potential harms arising from its special access agreements with Qwest, but its claims are meritless. tw telecom's allegations expressly relate to its individual negotiations with Qwest that pre-date the closing of this transaction. tw telecom does not argue that the transaction itself will materially alter its negotiations. Indeed, nothing in tw telecom's filing suggests that it would take any different position or raise any different arguments if this transaction did not exist. The Commission should not insert itself into individual carrier negotiations merely because this transaction is before it. The Commission is actively considering a variety of special access issues in a separate, industry-wide proceeding. In that proceeding, the Commission is developing a full record from local, regional, and national carriers, including CLECs as well as other interested parties. To the extent that tw telecom is raising special access issues beyond its individual negotiations with Qwest, those broader issues should be resolved through the Commission's separate special access docket.

B. tw telecom's Assertions That The Merged Company Could Raise Rivals' Costs of Exchanging Internet Backbone Traffic Are Speculative And Lack Support in the Record

tw telecom cites no evidence to support its theory that the merged company may be able to raise rivals' Internet backbone costs.³ It raises the same generic allegation that it has raised in other merger proceedings. The Commission's analysis in *AT&T/BellSouth* is on point. The Commission there found no evidence of anticompetitive effects either through unilateral conduct or coordinated conduct.⁴ The Commission noted that the transaction would result in no change in the number of Tier 1 providers, and rejected as speculative tw telecom's nearly identical allegations that the merged company would have the incentives to raise rivals' costs. For the same reasons, the Commission should conclude here that the merger will have no effect on the availability or pricing of Internet backbone service.

IV. TW TELECOM'S PROPOSED CONDITIONS ARE UNNECESSARY AND UNSUPPORTED BY THE RECORD

None of the wholesale conditions proposed by tw telecom is necessary or justified by the record in this proceeding.

As noted, the Applicants have reached multiple settlements with state commission staffs, CLECs, and other interested parties that address the substance of tw telecom's concerns. States

³ tw telecom letter at 7.

⁴ *AT&T/BellSouth Order*, ¶¶ 129-154.

such as Colorado and Utah have concluded that the terms of the proposed merger and the additional guarantees made in these agreements will help ensure that the public will benefit from the merger without risk of disruption to wholesale arrangements relied upon by competitors.⁵ For example, the Applicants have committed to keep existing wholesale OSS systems in place for at least two years following close, and potentially longer, until July 1, 2013 at the earliest.⁶ The Applicants have committed to give wholesale customers ample and adequate notice prior to making any OSS changes.⁷ And the Applicants have committed as a condition of state approvals to extend current tariff-based arrangements for 12 months after close, including term and volume discount plans.⁸

The states, settling CLECs, and other settling parties each view the settlement agreements entered into by the Joint Applicants as fully sufficient to ensure that there will be no harm to competition from this transaction, and no abrupt changes in wholesale arrangements. For example, the Colorado PUC found no merit in tw telecom's argument to freeze existing contracts, services and OSS for three years, and declined to adopt tw telecom's additional requested conditions.⁹ Just this week an Administrative Law Judge in Minnesota recommended

⁵ *E.g., Joint Application of Qwest Communications International, Inc., and CenturyLink, Inc., for Approval of Indirect Transfer of Control of Qwest Corporation, El Paso County Telephone Company, Qwest Communications Company, LLC and Qwest LD Corp., Initial Commission Decision Granting Approval of Indirect Transfer of Control (Pub. Utils. Comm'n of Colo., adopted Dec. 15, 2010, mailed Jan. 3, 2011) ("Colorado Order")*, at 27, para. 77; *Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation, Report and Order in Docket 10-049-16 (Pub. Svc. Comm'n of Utah, Jan. 4, 2011)*, at 3-4 ("The Commission finds the settlement agreements strike an appropriate balance between the interests of the Joint Applicants, the interests of their wholesale customers (CLECs), and the interests of retail customers in Utah. Therefore, no other conditions other than those contained in the individual settlements will be imposed.").

⁶ *E.g., Colorado Order* at 21, para. 55.

⁷ *E.g., id.* ("The merged company will file any proposed changes with the Wireline Competition Bureau of the FCC at least 270 days before implementation, and will detail the changes proposed. The current Qwest Change Management Process will govern the changes to OSS and any replacement or retirement of current OSS with a new system will be tested until mutually negotiated acceptance criteria are satisfied. Testing will include a testing environment and controlled production testing, and the merged company will provide training and education regarding the new system.")

⁸ *E.g., id.* at 20, para. 55.

⁹ *See id.* at para. 47 (contrasting the tw telecom demands with the Integra settlement), para. 58 (finding that the proposed merger, as modified by the settlements, will not be

approval of the transaction based on existing settlement agreements (such as those with Department of Commerce, 360networks, the Communications Workers of America, and Integra)—without additional conditions.¹⁰ The same result is appropriate here.¹¹

tw telecom and other CLECs will benefit from the existing settlement agreements with other CLECs. Colorado's PUC, for example, made clear that the Integra settlement will be available to all CLECs doing business in the state. More broadly, the Applicants expect to offer the terms to which they have agreed with specific CLECs in particular states to all of the CLECs operating within that state, upon consummation of the merger.

The lengthy extension of conditions that tw telecom proposes is unnecessary. To the extent that tw telecom has ongoing concerns beyond the duration that others have found sufficient, there are processes in place to address tw telecom's interests. tw telecom already meets on a monthly basis with Qwest to discuss service performance improvement initiatives, and CenturyLink does not anticipate changing this practice following close. In addition, under the Integra settlement terms, the merged company will continue current wholesale performance reporting in legacy Qwest territories. CenturyLink intends that CLECs, including tw telecom, will continue to have meaningful opportunities to monitor performance, and raise and resolve any wholesale concerns that may arise in the future with the merged company.

contrary to the public interest), paras. 75-77 (declining to adopt the recommendations offered by tw telecom, noting that the Integra settlement "provides a reasonable level of protections to the CLECs beyond what was initially offered by the Joint Applicants. We decline to adopt the additional recommendations offered by the non-settling CLECs. [...] We find that the Integra settlement agreement will maintain some certainty and stability in the relationships between the CLECs and the Joint Applicants.").

¹⁰ See *In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink*, Findings of Fact, Conclusions of Law, and Recommendation, State of Minnesota Office of Administrative Hearings for the Public Utilities Commission (ALJ Jan. 10, 2011) (enclosed).

¹¹ It is revealing that tw telecom has spent most of this proceeding joining Integra's filings, and only now that Integra has reached a settlement agreement with the Applicants has tw telecom decided that Integra's positions are inadequate.

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V. CONCLUSION

Though tw telecom proposes burdensome conditions on the Applicants, it provides no concrete justification for any of them. As noted by the Public Utilities Commission of the State of Colorado, the Applicants are facing increased levels of competition, and any conditions must be justified in the public interest. The conditions to which the Applicants and many settling parties have agreed will protect consumers and ensure continuity of wholesale services following the merger. For the reasons stated above, the Commission should deny tw telecom's requests for additional, overreaching conditions and promptly approve the pending applications.

Respectfully submitted,

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Enclosure

cc: Bill Dever
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