BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1484

In the Matter of	Docket No. UM 1484
CENTURYLINK, INC.	SPRINT'S OBJECTIONS TO STIPULATION
Application for Approval of Merger between CenturyTel, Inc. and Qwest Communications International, Inc.	

I. INTRODUCTION

Sprint Communications Company L.P., Sprint Spectrum, L.P., and Nextel West Corp. (collectively, "Sprint"), pursuant to OAR 860-001-00350 objects to the Stipulation between CenturyLink, Inc. ("CenturyLink"), Qwest Communications International, Inc. ("Qwest") (together referred to as the "Merged Firm"), Staff of the Public Utility Commission of Oregon ("Staff) and the Citizens Utility Board of Oregon ("CUB") as it does not satisfy the Commission's "no harm" standard for analyzing mergers. In the Commission's Order in the Verizon/Frontier Merger,[1] the Commission stated its standard of review is, "When considering whether to approve this transaction, the standard of approval applied by the Commission is whether the transaction serves the public interest

[1] *In the Matter of Verizon Communications Inc. and Frontier Communications Corp. Joint Application for an Order Declining to Assert Jurisdiction, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc.*, Order No. 10-067, Oregon Public Utility Commission , UM 1431 (2/24/10) ("Verizon/Frontier Order")

by causing 'no harm.'"[2] The Commission then stated "the continued existence of a robust, competitive marketplace is essential to satisfying the 'no harm' standard for this transaction."[3] Without additional or modified conditions, the merger will do harm as the competitive marketplace will suffer.

Sprint objects to the Stipulation as the wholesale conditions agreed to by the Merged Firm, Staff and CUB do not do nearly enough to ensure the existence of a robust, competitive marketplace. Primarily, Sprint objects to the Stipulation because: (1) it does not require that CenturyLink interconnection agreements be extended; (2) it only extends Qwest interconnection agreements for three years and not the requested four years; (3) it does not allow for the porting of interconnection agreements between states or between Qwest and CenturyLink entities into a consolidated Qwest/CenturyTel/Embarq interconnection agreement; (4) it does not require a single point of interconnection be made available for CMRS carriers and CLECs to allow for competitive carriers to take advantage of the network efficiencies gained by the merger; (5) it does not prevent the third largest ILEC in the country from claiming exemptions from competition due to the rural exemption (6) it does not require that CenturyLink's intrastate access rates be reduced to the level of the Qwest ILEC's intrastate rates and then all access rates to the level of Qwest's interstate rates; and (7) it contains no condition on enforcement of the merger conditions.

Points 1-3 and 6-7 are supported by Sprint's testimony in this proceeding. Points 4 and 5 are supported by the testimony of the Joint CLECs.

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[2] Verizon/Frontier Order, p. 6.

[3] Verizon/Frontier Order, p. 20.

Even though Sprint does not support the Stipulation, if the Commission does accept it then the Stipulation should include a Most Favored States condition. On this point Sprint supports Mr. Dougherty's testimony in Staff Exhibit 700 and Mr. Feighner's testimony in CUB Exhibit 200 requesting that the Commission impose conditions upon the Merged Firm that are imposed upon them by other states and the FCC.

The Stipulation requires the Merged Firm to provide a $45 Million in broadband build-out in five years, which is touted as a key benefit that Oregon ratepayers will receive from the merger. However, the Stipulation does not address how much of that build-out is already included in CenturyLink's pledge to the FCC to gain its approval. CenturyLink has promised to build broadband to 100% of its retail single line residential and single line business customers within three years.[4] If the promised Oregon broadband commitment is only a "sleeves out of the vest" commitment by the Merged Firm because of its preexisting FCC obligation then no significant independent consideration from the Merged Firm supports the Stipulation. The public will not be gaining a significant public benefit **due to the Stipulation** and the Commission should engage in more rigorous scrutiny as to whether the Stipulation truly is in the public interest particularly when there are serious harms that could result without further protections.[5]

In sum, the Stipulation should be rejected without the additional conditions identified herein.

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[4] *In the Matter of Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc.*, WC Docket No. 08-238, FCC 09-54 (Released June 25, 2009), Appendix C, page 31. *("The merged company expects to make substantial additional investment in broadband services. The merged company will offer retail broadband Internet access service to 100 percent of its broadband eligible access lines within three years of the Transaction Closing Date.")*

[5] See Testimony in Support of the Stipulation, pp. 8-9.

II. THE STIPULATION FAILS TO ADEQUATELY ADDRESS THE REQUESTED INTERCONNECTION AGREEMENT CONDITIONS

One of the key competitive roadblocks for carriers such as Sprint is the existence of many separate interconnection agreements with ILECs around the country. Negotiating, monitoring, renewing and complying with the agreements impose significant transaction costs for competitive carriers. Minimizing these transaction costs would provide a public benefit because it would enable competitive carriers to pass cost savings through to customers in competitive rates. One obvious way to do this would be to move toward fewer interconnections agreements. In a merger situation like the present one, common sense and sound public policy points to requiring the same interconnection agreement(s) for the Merged Firm. After all, if CenturyLink and Qwest justify their merger by exhorting the financial synergies of running a consolidated company why shouldn't they be required to consolidate their many interconnection agreements? The Stipulation's interconnection provisions fail to move toward this goal in a meaningful way, although there is some slight benefit. In reality, the Stipulation only perpetuates the existing regime, which continues the Merged Firm's ability to impose transaction costs on competitors.

Condition 28.a. in the Stipulation allows CLECs and CMRS carriers to extend their interconnection agreements ("ICAs") with **Qwest** for thirty-six (36) months after the Closing Date of the merger. This condition is insufficient for three reasons.

First, the condition does not apply to the extension of the interconnection agreements of the CenturyLink ILECs (Embarq and CenturyTel) operating in Oregon. Just as it is important for CLECs and CMRS carriers to have certainty regarding the

status of their Qwest ICAs, it is equally important to allow CLECs and CMRS carriers to extend their ICAs with CenturyLink at their option. A condition that extends only to the Qwest ICAs raises the costs for interconnecting carriers as they could be forced to renegotiate and arbitrate their CenturyLink ICAs well before the Qwest extensions expire. Rather than expending resources in negotiating and arbitrating ICAs, interconnecting carriers would rather focus on providing competitive services. This same concern applies for both the Qwest and the CenturyLink ICAs. Therefore, extensions of ICAs should not be limited to Qwest ICAs.

Staff states on page 21 of the testimony supporting the Stipulation that "the additional stipulation between the Applicants and Integra allows confidence that the concerns of competitive carriers were adequately addressed by CenturyLink." This statement is baseless because Integra only has ICAs with Qwest whereas Sprint's wireless and wireline entities have ICAs with **both** Qwest and CenturyLink ILECs. Thus, Integra 's concerns were limited to Qwest and it provided no protection whatsoever to competitive carriers who have to deal with the CenturyLink ICAs, like Sprint. Clearly, the concerns of carriers like Sprint are not addressed by the condition that only extends the Qwest ICAs.

Moreover, extension of Qwest ICAs but not the CenturyLink ICAs deprives interconnecting carriers like Sprint of the efficiencies from the Merger that the Merged Firm will achieve. Rather than allowing competitive carriers to at least work under all existing ICAs, exempting the CenturyLink ICAs from an extension requirement will force competitive carriers to juggle different ICAs of varying lengths. If a benefit of the merger is to obtain true synergies then these should be achieved in all areas of the

Merged Firm's operations. In the end, the Merged Firm's reluctance to extend the extension condition to the CenturyLink ICAs is merely a vehicle for it to impose costs upon its competitors.

The second reason Condition 28.a is insufficient is that the extension is only for three years rather than the four years that Sprint requested in its testimony.[6] A four-year extension is more appropriate as it will give interconnecting parties like Sprint additional time to work under the existing ICAs. If amendments are requested by CenturyLink due to changes in the law, the existing ICAs have provisions to address that situation. Four-year extensions rather than three-year extensions will help minimize the costs that the Merged Firm can impose on its competitors.

The third reason Condition 28.a is insufficient is that it does not allow for the porting of interconnection agreements between states or between Qwest and CenturyLink entities into a consolidated Qwest/CenturyTel/Embarq interconnection agreement.

The Merged Firm asserts that the proposed merger is in the public interest because all the synergies CenturyLink and Qwest will realize are presumptively beneficial for the Merged Firm's customers. While Sprint does not object to the notion that the Merged Firm should be able to enjoy significant synergies by combining the two companies' networks, management, and other operations, Sprint should be able to benefit as well because it is a wholesale customer. This can be done by allowing competing carriers to consolidate/port existing ICAs with the Merged Firm. Qwest and CenturyLink have identified no technical reason why an ICA from Qwest will not work in CenturyLink territory, speculating only that is that such porting sounds difficult to do.

[6] Sprint/1, p. 26.

Given that the burden really is upon Qwest and CenturyLink to justify their merger the Commission would be acting in the public interest to insist upon more rigorous competitive conditions that are contained in the Stipulation.

Like contract extensions, porting a contract from one ILEC to another in the Merged Firm avoids the burdensome incremental cost of contract negotiations and potential arbitration to establish a new contract. With more than 100 ILECs in the Merged Firm[7] (and its stated plan to retain each legal entity), management of the interconnection arrangements will be unnecessarily burdensome. For instance, if Sprint needs to interconnect with multiple Merged Firm entities in multiple locations Sprint will need to negotiate with such entities on a myriad of issues over and over again. It makes much more sense for the industry as a whole to move towards minimizing the number of ICAs across the country. Porting existing agreements from one ILEC to another within the Merged Firm, even if the agreement originated in another state would promote this goal. The porting of existing agreements may also result in one nationwide interconnection agreement. In sum, porting of interconnection agreements prevents the Merged Firm from imposing unnecessary negotiation and legal costs upon its competitors.

Sprint incorporates herein the testimony of Dr. Frentrup, which provides additional reasons why the interconnection agreement conditions proposed by Sprint are appropriate and provides further perspective on why Stipulation does not go far enough on ensuring that wholesale competition is not harmed by the Merger.

[7] Nationally, CenturyLink will have approximately 75 legacy CenturyTel ILEC legal entities, approximately 25 legacy Embarq ILEC legal entities and 13 legacy Qwest ILEC legal entities.

III. SPRINT SUPPORTS THE CONDITIONS PROPOSED BY THE JOINT CLECS

Sprint further objects to the Stipulation because it does not contain two specific conditions proposed by the Joint CLECs, which would promote wholesale customers and enhance competition. Specifically, Sprint supports the Joint CLECs' proposed condition that allows for interconnecting carriers to have a single point of interconnection with all of the Merged Firm's ILECs in a particular state. Once again, the Merged Firm wants to take advantage of the synergies of the merger but deprive its wholesale customers of the benefits of the synergies. A single point of interconnection reduces the trunking and facility costs for competitors. Just as the Merged Firm realizes network synergies, so, too wholesale competitors should be able to reduce their interconnection costs. The Stipulation should include a condition on allowing competitive carriers to interconnect with the Merged Firm at a single point.

In addition, Sprint supports the condition proposed by the Joint CLECs that prohibits any of the CenturyLink ILECs from exercising the rural exemption. The Merged Firm is the third largest ILEC in the nation. It makes no sense for a company of this size and scale to be able to claim the rural exemption under Section 251(f) to protect it from competition.

IV. THE STIPULATION FAILS TO REDUCE THE INTRASTATE ACCESS RATES OF THE CENTURYLINK ILECS TO THE LEVEL OF THE QWEST ILECS

The Stipulation does not address the issues raised in Sprint's testimony regarding the intrastate access rates of the Merged Firm. Sprint is aware that the ALJ struck portions of Dr. Frentrup's testimony related to intrastate access rates. But Sprint intends to make an offer of proof at the hearing related to that testimony.

Sprint's testimony goes to great lengths to explain the specific merger-related harms to competition. The Merged Company can harm competition by using owner's economics over a much larger territory to impair competitors' efforts to win customers. While there is nothing wrong inherently in a telecommunications company increasing its ownership of essential network facilities through a merger, competition will be harmed if that company is able to avoid costs it otherwise would have had to pay by acquiring monopoly switched and special access facilities. These must be utilized by long distance carriers to terminate calls to the facilities' owners – in this case, the Merged Firm – which can charge excessively high access rates to competitors. These are costs the Merged Firm gets to avoid by virtue of acquiring the monopoly facilities. Ultimately, post-merger CenturyLink and Qwest, would be able to account for, or internalize, the access payments that each pays the other pre-merger. They evaporate as real costs . However these access charges remain as actual costs for competitors like Sprint. Sprint proposes modest conditions to help remedy this merger-specific harm to reduce the CenturyLink ILECs' excessively high access rates to the levels of Qwest's intrastate access rates and then the intrastate rates of all the CenturyLink and Qwest ILECs to be reduced to the interstate rates of Qwest. Sprint has not proposed major access charge reform but simply requests the Commission to remedy a specific, merger-related harm. In other words, the determination of whether the merger is in the public interest can be satisfied by conditions that reduce specific merger-related harms.

Contrary to CenturyLink's claims that access reductions as part of a merger proceeding do not provide public interest benefits to offset merger-related harms,

CenturyTel and Embarq agreed as a condition to their merger at the FCC to reduce interstate access rates in the CenturyTel territories to match the interstate access rates Embarq. There, the FCC stated that "[w]e also find that the merger should result in lower access rates because of the change in regulatory status for CenturyTel, which should benefit long-distance callers."[8] It is ironic that CenturyLink here claims that access reductions should not be considered as an issue when examining the public interest in a merger proceeding *when it agreed to reduce its own interstate access rates as a condition to approval of its merger with Embarq*. Requiring that merging ILECs match their access rates is a tool that will benefit long distance callers and to help allay merger-related harms. The Oregon Commission should not dismiss the possibility of imposing such a condition on this merger of ILECs with vastly different intrastate access rates. The Stipulation should be revised to include Sprint's conditions to reduce the intrastate access rates of the Merged Firm.

V. THE STIPULATION DOES NOT ADDRESS ENFORCEMENT

Sprint is concerned that the Merged Firm, whether intentionally or unintentionally, may not interpret a merger condition in the same manner that the beneficiaries of the merger condition do. Sprint also has encountered objections from ILECs as to what the appropriate forum is for bringing a regulatory or legal action to enforce merger conditions. To erase doubt about merger condition enforcement, and to encourage the Merged Firm to implement in good faith all of the merger conditions approved by the Commission, Sprint proposes that the Commission specify how merger

[8] *In the Matter of Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc.*, WC Docket No. 08-238, FCC 09-54 (Released June 25, 2009), ¶ 45 (emphasis added).

conditions are to be enforced. The Stipulation should contain the language Sprint suggested in its testimony regarding enforcement. Sprint proposed:

> The Oregon Public Utility Commission, the courts, and to the extent appropriate, the FCC if it adopts a similar condition, shall each have jurisdiction to enforce these Merger Conditions and carrier customers shall be granted standing to complain to the foregoing bodies if the Merger Conditions are violated. The Merged Firm will be responsible for paying attorneys fees of complaining parties in any case where complaining parties seek to enforce Merger conditions and are successful in such enforcement. In addition, in any instance where a complaining party seeks to enforce a Merger condition through complaints to the Oregon Public Utility Commission, the courts, or to the FCC to the extent appropriate if it adopts a similar condition, and is successful in such enforcement, the complaining party may also require, at its option, that the term of any Merger commitment so enforced be extended for an additional 48 months in addition to the initial term.[9]

VI. CONCLUSION

The Stipulation is not in the public interest and does not satisfy the "no harm" standard. The Stipulation does not acknowledge that "the continued existence of a robust, competitive marketplace is essential to satisfying the 'no harm' standard for this transaction"[10] and incorporate terms that protect that competitive marketplace. In fact, without additional or modified conditions, the merger will do harm as the competitive marketplace stands to suffer. For the reasons cited herein, and more fully in its filed testimony, Sprint requests that the Commission impose the additional conditions that Sprint identifies above. Sprint also suggests that the Commission do its due diligence on the broadband commitment condition and insist that Oregon ratepayers indeed do get added value as a result of the Stipulation. Finally, if the Stipulation goes forward, Sprint supports Mr. Dougherty's testimony in Staff Exhibit 700 and Mr. Feighner's testimony in

[9] Sprint/1, pp. 31-32.

[10] Verizon/Frontier Order, p. 20.

CUB Exhibit 200 requesting that the Commission add a Most Favored States condition to allow this Commission to impose conditions upon the Merged Firm that are imposed upon them by other states and the FCC. This will ensure that the work done by the FCC and other state commissions can be implemented in Oregon.

RESPECTFULLY SUBMITTED this 14th day of December, 2010.

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December 14, 2010

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Re: *In the Matter of CenturyLink, Inc., Application for Approval of Merger Between CenturyTel Inc. and Qwest Communications, Inc.*
Docket UM 1484

Dear Commission:

Enclosed for filing in the above docket are an original and five copies of Sprint's Objections to Stipulation, Declaration of James A. Appleby and Certificate of Service in Docket UM 1484. Should you have any questions concerning this submission or need additional information, please contact me at (206) 340-9694.

Very truly yours,

GRAHAM & DUNN PC

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BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1484

In the Matter of	Docket No. UM 1484
CENTURYLINK, INC.	CERTIFICATE OF SERVICE
Application for Approval of Merger between CenturyTel, Inc. and Qwest Communications International, Inc.	

I hereby certify that the (1) Declaration of James A. Appleby and (2) Sprint's Objections to Stipulation were served on the following persons on December 14, 2010, by email to all parties and by U.S. Mail to the parties who have not waived paper service as follows:

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DATED this 14th day of December, 2010, at Seattle, Washington.

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