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January 25, 2011

Filing Center
Public Utility Commission of Oregon
550 Capitol Street, NE
Salem, Oregon 97308-2148

Re: *In the Matter of CENTURYLINK, INC., Application to Approve the Indirect Transfer of
Control of Qwest Corporation;*
Docket No. UM 1484
DOJ File No. 860105-GP0071-10

Dear Filing Center:

Enclosed for filing please find the Public Utility Commission of Oregon's Opening Brief in the above-titled matter.

Thank you for your attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephanie S. Andrus", written over a horizontal line.

Stephanie S. Andrus
Assistant Attorney General
Of counsel for Staff of the OPUC

Enc.
c. service list

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1484**

In the Matter of

CENTURYLINK, INC.

Application for an Order to Approve the
Indirect Transfer of Control of QWEST
CORPORATION

OPENING BRIEF BY STAFF OF THE PUBLIC
UTILITY COMMISSION OF OREGON

1 **I. Introduction.**

2 On May 24, 2010, CenturyLink, Inc. (“CenturyLink”) filed an application with the
3 Commission asking for approval of the indirect merger of CenturyLink and Qwest
4 Communications International, Inc. (“Qwest”) under ORS 759.375, ORS 759.380, OAR 860-
5 027-0025, and any other applicable law or rule (“the Application”). Several competitive local
6 exchange carriers (“CLECs”), wireless carriers, Tillamook County, Lincoln County, and Lincoln
7 City intervened in the above-captioned contested case proceeding initiated to address
8 CenturyLink’s request.¹ In August 2010, most of the intervenors and Commission Staff
9 (“Staff”), filed testimony opposing the Application.²

10 On November 9, 2010, Integra, CenturyLink, and Qwest filed a stipulation with the
11 Commission under which Integra agreed to support the merger between CenturyLink and Qwest
12 in Oregon as well as in thirteen other states. On December 2, 2010, Staff, the Citizens’ Utility
13 Board of Oregon (“CUB”), CenturyLink, and Qwest filed a stipulation with the Commission
14 under which Staff and CUB agreed to recommend approval of the Application, subject to
15 conditions that address concerns raised by Staff, CUB, and other parties to the proceeding
16 (“Stipulation”).

17 Staff, CUB, CenturyLink, and Qwest stipulated to the imposition of 53 conditions on
18 CenturyLink and Qwest if the merger is completed. (Staff will refer to the post-merger entity as
19 the “Merged Company”). The only issue on which these parties do not agree is whether the
20 Commission should approve the Application subject to two additional conditions – one imposing

21 _____
22 ¹Intervenors include tw telcom of Oregon, llc., Covad Communications Company, Level 3
23 Communications, LLC, 360networks (USA) inc., Charter Fiberlink Or-CCVII, LLC, XO
24 Communications Services, Priority One, Integra companies (Integra Telecom of Oregon, Inc.,
25 Advanced Telecom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon
26 Telecom Inc., and United Telecommunications, Inc., d/b/a Unicom), TRACER, Sprint Nextel, T-
Mobile, Warm Springs Telecommunications Company, Tillamook County, Lincoln City, the
Citizens’ Utility Board , and Parker Communications. On October 9, 2010, 360networks (USA)
withdrew from the docket after entering into an agreement with the Applicant.

² See Intervenor Testimony filed on August 24, 2010 and Staff Testimony filed on September 3,
2010.

1 a reporting requirement regarding DSL service and subscriptions and the other, a “most-favored
2 state” (“MFS”) condition. Staff and CUB recommend that the Commission approve the
3 Application subject to these two conditions. CenturyLink asks the Commission to approve the
4 Application without them.

5 Covad Communications Company, tw telecom of Oregon, llc, Level 3 Communications,
6 LLC, and Charter Fiberlink OR-CCVII (“Charter”), LLC., (“Joint CLECs”), Sprint Nextel, Inc.
7 (“Sprint”), and Charter (individually)³ filed objections to the Stipulation grounded on assertions
8 the 53 stipulated conditions do not sufficiently protect wholesale competitors. These parties
9 recommend that the Commission approve the Application subject to the stipulated conditions,
10 only if the Commission imposes additional conditions that they believe protect wholesale
11 competitors.

12 Tillamook and Lincoln counties, Lincoln City, and Parker Telecommunications (“Coastal
13 Intervenor”), also object to the Stipulation. They ask the Commission to impose two additional
14 conditions that they believe address their concerns regarding the availability and quality of
15 service in Lincoln and Tillamook counties.

16 Staff does not recommend that the Commission condition its approval of the Application
17 on the imposition of the additional conditions recommended by the Joint CLECs, Charter, Sprint
18 and the Coastal Intervenor. The 53 conditions in the Stipulation and two conditions
19 recommended by Staff and CUB are adequate to ensure the merger satisfies Oregon’s statutory
20 criteria for approval.

21 **II. The Transaction.**

22 According to the Application, CenturyLink is a publicly-traded Louisiana corporation
23 with headquarters in Monroe, Louisiana. CenturyLink serves approximately 7 million access
24 lines nationwide, 2.2 million broadband subscribers, and over 553,000 video subscribers in 33
25

26 ³ Charter filed joint testimony with Joint CLECs and also filed its own testimony opposing the Stipulation.

1 states. CenturyLink's Oregon Incumbent Local Exchange Carriers ("ILECs") are
2 telecommunication utilities as defined in ORS 759.005 and are subject to traditional rate
3 regulation. Combined, CenturyLink's ILECs serve approximately 109,000 access lines in the
4 state.

5 Qwest is a subsidiary of QCII, which is a publicly traded corporation headquartered in
6 Denver, Colorado. Qwest provides ILEC services in 14 states, serving approximately 10.3
7 million access lines. Qwest serves approximately 802,200 access lines, as well as intrastate
8 interexchange services, in Oregon.

9 Both CenturyLink and Qwest provide regulated retail and wholesale services under the
10 jurisdiction of this Commission, as well as interconnection services to Competitive Local
11 Exchange Carriers ("CLECS") through numerous interconnection agreements approved by the
12 Commission.

13 CenturyLink created a wholly-owned subsidiary for the purpose of completing the
14 merger ("Acquisition Company"). Under the terms of the merger agreement, CenturyLink and
15 QCII will merge, after which QCII will be the surviving entity and the Acquisition Company will
16 cease. QCII will become a wholly-owned first-tier subsidiary of CenturyLink. CenturyLink
17 asserts that they will be no change in corporate structure of the respective companies as a result
18 of the merger. Qwest will remain a subsidiary of QCII.

19 CenturyLink has asked the Department of Justice/Federal Trade Commission, Federal
20 Communications Commission ("FCC") and 21 other states to approve the proposed merger
21 (hereinafter referred to as the "Transaction").

22 **III. Standard of review.**

23 The Commission's standard of review is established pursuant to ORS 759.375 and ORS
24 759.380. Under those statutes, the Commission reviews the proposed transaction to determine
25 whether it serves the public interest by doing no harm.⁴

26 ⁴ See OPUC Order No. 10-067 at 6 (Docket No. UM 1431).

1 **IV. The Stipulation.**

2 CUB, Staff, Qwest, and CenturyLink recommend that the Commission approve
3 CenturyLink's application subject to 53 stipulated conditions. These parties have also agreed
4 that Staff and CUB will recommend that the Commission approve the Stipulation subject to two
5 additional conditions and that CenturyLink and Qwest will ask the Commission to approve the
6 Transaction without these additional conditions.

7 Under the stipulated conditions, the Merged Company must:

- 8 • not change the operation structure of the two merging companies,(which includes
9 four ILECs operating in Oregon), without Commission approval (condition 4);
- 10 • provide the Commission access to all books of account and to all documents and
11 data relating to the Transaction, submit standard Annual Report forms and results
12 of operations reports for all operating companies, report on the integration of
13 CenturyLink and Qwest and costs and savings of the integration, notify the
14 Commission of material changes to the Transaction, report on certain post-merger
15 financial conditions, share prices, its consolidated balance sheet, intercompany
16 payables and receivable, and dividend payments declared by CenturyLink, report
17 on retail service quality in accordance with OAR 860-023-0055, switching
18 infrastructure in Oregon, switch replacements, capital expenditures in the year
19 after the Transaction, and provide Staff the detailed Form-477 data on the Merged
20 Company's four operating companies that is currently provided to the FCC for
21 their service areas (conditions 1, 3, 11, 12, 19, 20, 22, and 23);
- 22 • notify all customers of the merger and change of parent company and notify
23 OTAP/Lifeline customers the merger will not affect their OTAP/Lifeline credits
24 (condition 5);
- 25 • agree that the Commission may review the reasonableness of the financial aspects
26 of the Transaction in any rate proceeding or earnings review under an alternate
 form of regulation (condition 2);
- not request recovery of acquisition costs, an acquisition premium, transition,
 transaction, branding, or transaction-related costs, or a cost of capital that is
 higher than it would have been absent the merger (conditions 8, 9,10, and 17);
- not encumber the assets of Qwest's Oregon operating companies that are
 necessary or useful to the public without Commission approval (condition 16);
- maintain Commission-regulated intrastate service currently offered by Qwest in
 Exchange and Network Tariff No. 33 and Private Line Transport Services Tariff
 No. 31 for three years, unless otherwise authorized by the Commission (condition
 6);

- 1 • follow the terms and conditions of Qwest's UM 1354 price plan, except with
2 respect to reporting conditions described above and, with some exceptions, the
3 requirements of ORS 759.380 and 759 (conditions 7 and 18);
- 4 • expend \$45 million in broadband deployment in Applicant and Qwest areas in
5 Oregon over a five year period beginning January 1, 2011, and report to the
6 Commission regarding broadband deployment, including the additional number of
7 households capable of receiving broadband (condition 13);
- 8 • provide to the Commission 90 days advance notice of conversion of major
9 Qwest/Applicant retail operations support systems that impact Oregon operations
10 (condition 27);
- 11 • maintain minimum Commission retail service quality standards (condition 22);
- 12 • honor any and all promotional discount offers made by Qwest pre-merger
13 (condition 14);
- 14 • notify customers in the pre-merger Qwest areas and pre-merger CenturyLink
15 areas, in advance, if Merged Company changes carriers used to provide intrastate
16 long-distance service and for 90 days after the transaction, waive intrastate long-
17 distance carrier change charges (condition 42);
- 18 • comply with all applicable federal and Oregon safety standards and requirements
19 (condition 24);
- 20 • provide a list of persons to contact in Merged Company's organization regarding
21 safety and pole attachment matters (condition 25);
- 22 • construct a physical communication link between Lincoln City and Newport
23 (condition 27);
- 24 • comply with all applicable affiliated interest requirements (conditions 51-53);
- 25 • designate a representative to serve on the Commission's OTAP Advisory
26 Committee and at least one liaison to the OTAP Manager, maintain sufficient staff
levels to effectively communicate with OTAP staff, provide advance notice to
OTAP Staff of billing system consolidation or changes and of changes to Qwest's
mechanized OTAP reporting system; and contact OTAP Staff regarding
discrepancies regarding customers approved or not approved for OTAP/Lifeline
in pre-merger Qwest and Applicant areas (conditions 43-48 and 50); and
- not have outstanding debt to the Commission with respect to RSPF surcharge
collection, remittance, and reporting requirements (condition 49).

23 The remaining stipulated conditions that are not discussed above—part of condition 27,
24 and 28-41—are designed to protect CenturyLink's and Qwest's wholesale competitors. These
25 conditions will be discussed below.

26 ///

1 **V. The Commission should adopt CUB and Staff's recommended DSL reporting**
2 **and MFS conditions.**

3 CenturyLink asserts that Staff's recommended condition requiring the Merged Company
4 to annually report to the Commission regarding the number of DSL subscriptions and number of
5 complaints regarding DSL service that it has obtained in the previous year is beyond the
6 Commission's jurisdiction, is not competitively neutral, is not designed to address an identified
7 harm, and is not necessary for the Commission to effectively monitor CenturyLink's
8 commitment to increase broadband availability in Oregon.⁵ CenturyLink asserts that the most-
9 favored state condition is not necessary to ensure the transaction "is in the public interest and
10 does no harm." ⁶

11 **a. DSL reporting requirement.**

12 CenturyLink's jurisdictional objection appears to be based on a misunderstanding of
13 Staff's recommendation. Staff recommends that the Commission require the Merged Company
14 to file the annual reports as a condition of the merger. Whether the Commission has jurisdiction
15 to impose such a condition absent the merger is not at issue.

16 If the Commission adopts Staff's recommendation, and conditions approval of the
17 Application on CenturyLink's willingness to accede to the condition, CenturyLink can choose
18 whether it is willing to go forward with the merger notwithstanding the requirement that it file an
19 annual report for five years regarding its DSL subscriptions in Oregon and any complaints it has
20 received regarding its Oregon DSL service. In other words, the choice will be CenturyLink's as
21 to whether it wishes to proceed with the merger and operate in Oregon subject to reporting
22 requirement, or not.

23 Any argument that provision of broadband service is outside the scope of the Application
24 is not well taken. CenturyLink repeatedly touted the improved provision of broadband service in

25 _____
26 ⁵ CTL/1100, Jones/2.

⁶CTL/1100, Jones/2.

1 support of the Application. For example, CenturyLink's vice president of state regulatory affairs
2 testified that the merged companies' "greater potential to effectively reach more types of
3 customers with a broader range of products, services and connectivity solutions than either
4 company could standing alone," benefited customers:

5 * * * The combined enterprise will have over 17 million telephone access
6 lines and serve over five million high-speed internet customers across 37
7 states. It creates a truly nationwide platform for high-speed internet
8 deployment by merging Qwest's long-haul fiber network with
9 CenturyLink's complementary long-haul fiber network and its core
10 metropolitan rings. Combined, it gives CenturyLink approximately
11 180,000 route miles of fiber which will enable a more diverse mix of
12 product offerings and an enhanced ability to reach customers with those
products. The combined network will be a key differentiator in our
industry and it will heighten the ability to advance the deployment of high
speed Internet services as well as for the customer-desired "triple play" of
broadband, voice and video.⁷

13 Mr. Jones' testimony also includes the following:

14 Q. Please summarize your testimony [regarding the Application].

15 A. The Transaction is in the public interest.

16 * * * * *

17 CenturyLink will become stronger, and more diverse and flexible, by leveraging
18 the complementary financial, operational and network strengths of each of the two
19 companies. This will help to ensure and accelerate the continued deployment of
20 advanced, broadband services to the benefit of both residential and business
21 customers and competition in general. The combined company's expertise in
bringing high-speed broadband services to market, together with the robust,
nationwide fiber network, will also improve its competitive potential in the
enterprise business market.⁸

22 Staff disagrees with CenturyLink's assertion that the reporting requirement is not
23 necessary because CenturyLink has already stipulated to extensive reporting requirements
24 regarding its broadband deployment. CenturyLink has committed to reporting to the

25 ⁷ CTL/100, Jones 11-12.

26 ⁸ CTL/100, Jones/19-20.

Commission the progress of its build-out of broadband infrastructure, which will include a report regarding the number of houses that will become *capable* of receiving broadband.⁹ A report regarding the physical capability to provide broadband service, alone, is not sufficient to monitor CenturyLink's provision of that service in Oregon. To the extent that CenturyLink has committed to accelerated and improved access to broadband as a benefit to customers, the Commission should have the ability to monitor whether the Merged Company fulfills that commitment.

b. MFS condition.

Staff and CUB urge the Commission to adopt the following condition:

CenturyLink agrees that the Conditions may be expanded or modified as a result of regulatory decisions in other states and the FCC, including decisions based upon settlements, that impose conditions or commitments related to this merger proposal. CenturyLink agrees that the Commission may adopt any commitments or conditions from other states and the FCC that are adopted after the final order in UM 1484 is issued that are related to addressing harms of this transaction if:

The commitment or condition does not result in the combined company being required to provide a "net benefit" and either:

i. The Commission or Staff had not previously identified the harm to Oregon ratepayers and such harm is applicable to Oregon; or

ii. The commitments or conditions in a final order of another state and the FCC are more effective at preventing a harm previously identified by the Commission or Staff.

Should new commitments or conditions meeting the requirements of subsections i. or ii. of this paragraph occur, CenturyLink will commit to the following process to facilitate a prompt decision from the Commission under this section:

a) Within fifteen (15) calendar days after a final order adopting a new condition or stipulation with new or amended commitments by a commission in another state jurisdiction and the FCC, CenturyLink will send a copy of the stipulation and commitment to Oregon Commission Staff and to all parties in UM 1484.

b) CenturyLink will notify the Commission that they have received the last such final order from other states and the FCC adopting new conditions,

⁹ Stipulation, Attachment 1, Condition 13.

1 stipulations or commitments (the "Final Filing") within fifteen (15) calendar days
2 of receipt and send it to Staff and all UM 1484 parties.

3 c) Within fifteen calendar days after the last such filing from the other
4 states and the FCC ("Final Filing"), any party to this proceeding may file with the
5 Commission its response, including its position as to whether any of the
6 covenants, commitments and conditions from the other jurisdictions (without
modification of the language thereof except such non-substantive changes as are
necessary to make the commitment or condition applicable to Oregon), meets the
two requirements set forth above, and should be adopted in Oregon. Any party
filing such a response should serve it upon the UM 1484 parties.

7 Witnesses for CUB and Staff explained why the MFS condition is important and
8 appropriate. CUB witness Gordon Feighner testified:

9 By conducting regulatory proceedings early in the merger process, a state may fail to
10 identify risks that come to light through longer, more extensive discovery processes
11 in other states. A state that has its proceeding early in the regulatory process might
12 then inadvertently omit a condition that would mitigate a risk common to all the
13 states in which merger/transaction applications have been filed. It is unfair that a state
should be penalized by agreeing to a shorter regulatory process (which benefits the
applicants), when those same applicants agree to conditions to mitigate that risk in
other states after the docket in the early-going state has closed.¹⁰

14 Because the MFS condition is designed to only capture conditions in other states that
15 address harms present in Oregon but not identified by Oregon parties in this proceeding, or that
16 more effectively address harms in Oregon than the conditions stipulated to by Oregon parties,
17 CenturyLink's arguments opposing the condition are misplaced. First, given the limitations in
18 the condition, it will not be used to confer benefits on customers in Oregon. Instead, a condition
19 from other states or the FCC will be imported only if it addresses a harm that was not identified
20 in the Oregon proceeding or if it more effectively addresses a harm that was identified.

21 The MFS condition is also not unfairly one-sided. CenturyLink asserts that an
22 appropriate off-setting or corresponding condition would allow CenturyLink to ask Oregon to
23 remove a condition if another jurisdiction concluded the condition is not necessary to address
24 potential harm. This assertion also ignores the limitations of the MFS condition proposed by
25 Staff and CUB, which only allows Oregon to adopt a new condition if it addresses a harm not

26 ¹⁰ CUB/200, Feighner/3.

1 discovered during the Oregon proceeding, or addresses a harm that was discovered more
2 effectively.

3 Further, as CenturyLink notes, this Stipulation was a result of a negotiation based on the
4 particular circumstances in this state. Whether another jurisdiction finds a particular harm is not
5 present in that jurisdiction is not necessarily probative of whether that potential harm is present
6 in Oregon.

7 CenturyLink's argument that a MFS will discourage concessions by merging companies
8 is the flip side of Staff and CUB's concern about being the first jurisdiction to decide whether to
9 approve a merger request. CenturyLink's willingness to agree to the MFS condition is a
10 reasonable concession in exchange for Oregon's processing of its Applicant prior to the
11 conclusion of other jurisdictions. If CenturyLink is not willing to agree to such a condition,
12 Oregon's option is simply to go last.

13 CenturyLink's argument that the condition is not appropriate because the proceedings
14 initiated in other jurisdictions to review the Transaction are complete or nearing completion also
15 misses the mark.¹¹ If this is the case, CenturyLink is at little risk that the MFS condition will be
16 invoked.

17 Finally, CenturyLink's complaint that the condition was recently expanded to include
18 conditions imposed by the FCC is not compelling. The FCC is probably the best positioned to
19 identify harms of the Transaction presented to wholesale customers. It makes no sense for the
20 Commission to ignore the expertise of the FCC simply because it has not included the FCC in
21 MFS conditions adopted in previous cases.

22 **VI. The Commission should not impose the conditions recommended by competitive**
23 **carriers.**

24 Charter, Sprint, and the Joint CLECs each filed objections to the Stipulation, asking the
25 Commission to not approve it and the Application unless the Commission imposes additional

26 ¹¹ See CTL/100, Jones/7-8.

1 conditions protecting wholesale competitors. In summary, the competitive carriers urge that the
2 Commission, as conditions of approval of the Application, require the Merged Company to:

- 3 • permit a competitor to adopt, or opt-into, any interconnection agreement to which
4 Qwest is a party, in the same state, or in any state in which Qwest is an ILEC; or,
5 as urged by Sprint, allow for the porting of interconnection agreements between
6 states or between Qwest and CenturyLink entities (Charter Fiberlink/14 Pruitt/1;
7 Sprint's Objections/6-7);
- 8 • commit to discontinue using the rural exemption to avoid Section 251 obligations
9 (Sprint's Objections/8; Charter Fiberlink/14, Pruitt/1);
- 10 • allow CLECs to utilize a single point of interconnection per LATA for all the
11 CenturyLink's entities operating within that LATA (Sprint Objections/8; Charter
12 Fiberlink/14, Pruitt/1);
- 13 • provide non-discriminatory access to directory listing and directory assistance
14 functions. (Charter Fiberlink/14, Pruitt/1);
- 15 • use and offer to wholesale customers the legacy Qwest OSS for at least three
16 years (Joint CLECs/23, Gates/51);
- 17 • conduct third-party testing on replacement OSS that replaces a Qwest system and
18 benchmark the replacement OSS to ensure that it performs at current performance
19 levels (Joint CLECs/23, Gates/51);
- 20 • agree that the "Applicable Time Periods" for non-UNE commercial and wholesale
21 agreements and tariffs should be the "Defined Time Period" initially proposed by
22 Joint CLECs, or at a minimum, three years (Joint CLECs/23, Gates/51);
- 23 • agree to be subject to the Additional PAP (Joint CLECs/23, Gates/51);
- 24 • lengthen the voluntary moratorium on Qwest requests to reclassify wire centers as
25 "non-impaired" and requests for forbearance for the "Defined Time Period
26 initially proposed by the Joint CLECs (Joint CLECs/23, Gates/51);
- extend CenturyLink's interconnection agreements as well as Qwest's (Sprint's
Objections/4-6);
- extend Qwest's interconnection agreements by four years, rather than three as
required by stipulated condition 28 (Sprint's Objections/6); and
- reduce CenturyLink's intrastate access rates to the level of Qwest's ILEC
intrastate rates and reduce all access rates to the level of Qwest's interstate rates
(Sprint's Objections/8-10).

Staff understands the concerns underlying the objections to the Stipulation. However,
they are adequately addressed by the Stipulation. Additionally, Staff does not support several of
the additional conditions listed above because they appear likely to confer benefits on certain

1 entities, rather than ensuring that these entities are not harmed by the Transaction, or are
2 unnecessary because the stipulated conditions provide adequate protection. The stipulated
3 conditions are a more careful balance of the interests of CenturyLink, Qwest, and other entities
4 and are designed to satisfy the statutory standard.

5 **a. Require CenturyLink to retain Qwest's Operations Support Systems for**
6 **three years, rather than two as required by the Stipulation.**

7 Stipulated condition 27 requires CenturyLink to use and offer to wholesale customers
8 Qwest's existing (legacy) operations support systems ("OSS") for two years after the Transaction
9 is complete, or until July 1, 2013, whichever is later. This condition also specifies that to the
10 extent CenturyLink replaces or retires legacy Qwest OSS Interface after this time, CenturyLink
11 must first obtain acceptance of the replacement interface by a majority of CLEC and CMRS
12 carriers.

13 The Joint CLECs assert that the Commission should require CenturyLink to retain
14 Qwest's OSS for three years because two years "does not cover the minimum synergy
15 timeframe, and as a result, CLECs would face significant risk of harm related to OSS post
16 merger[.]"¹² The Joint CLECs state that "[w]holesale customers therefore need sufficient
17 conditions in place throughout the time that merger-related changes are occurring in order to
18 insulate them from the tendencies of the Merged Company to seek OSS synergies and
19 unwarranted market advantages at the expense of competitors and competition."¹³

20 The Joint CLECs' concerns are addressed by the requirement in condition 27 that
21 CenturyLink obtain acceptance by a majority of CLEC and CMRS carriers of any replacement
22 OSS until completion of merger-related OSS integration and migration activity. (Condition 27
23 specifies that whether this majority is obtained is determined by an actual vote.) In fact,
24 condition 27 offers greater protection than a prohibition on OSS replacement for a period of

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¹² Joint CLECs/23, Gates/11-12.

26 ¹³ Joint CLECs/23, Gates/14.

1 three years because condition 27 protections apply for as long as merger-related OSS integration
2 and migration activity is undertaken and completed, which may be longer than three years.

3 And, CenturyLink has agreed that the Commission will be the arbiter of when the integration and
4 migration activity is complete, in the event of a dispute between CenturyLink and others.

5 **b. Require third-party testing on replacement OSS.**

6 The Joint CLECs ask the Commission to require that the Merged Company contract with
7 a third-party to test any OSS that replaces legacy Qwest OSS. They also ask the Commission to
8 require CenturyLink to “benchmark” the legacy Qwest OSS to ensure that any replacement
9 performs as well as the legacy Qwest OSS.

10 Staff recommends that the Commission adopt the collaborative approach to OSS testing
11 and replacement set forth in condition 27. Under that condition, CenturyLink has agreed to give
12 CLECs 270 days advance notice of plans to replace legacy Qwest OSS. As noted above, “[t]he
13 replacement or retirement of a Qwest OSS Interface may not occur without sufficient acceptance
14 of the replacement interface by CLEC and [commercial mobile radio service] CMRS carriers to
15 help assure the replacement interface provides the level of wholesale service quality provided by
16 Qwest prior [to the merger].”¹⁴ Further, CLECs are invited to participate in the testing of the
17 replacement OSS.

18 The Joint CLECs’ assertion that the FCC has declared that third-party testing is the most
19 probative evidence that OSS functions are operationally ready, aside from actual commercial
20 usage, is not supported by the FCC order excerpted in the Joint CLECs’ testimony. In that
21 excerpt, the FCC states that in the absence of reliable data regarding commercial usage, the FCC
22 will consider “the results of carrier-to-carrier testing, independent third-party testing, and internal
23 testing” to assess commercial readiness of a BOC’s OSS. The FCC does not assert, as the Joint
24 CLECs claim, that the FCC considers third-party testing superior to carrier-to-carrier testing.
25 Instead, the FCC simply states that persuasive testing will provide objective means to evaluate

26 ¹⁴ Stipulation, Att. 1, condition 27c.

1 readiness and that the persuasiveness of third-party testing depends on the qualifications of the
2 third party.¹⁵

3 Furthermore, the Joint CLECs' request to benchmark legacy Qwest's current OSS does
4 not appear necessary to protect the CLECs' interests. Stipulated condition 34 requires the
5 Merged Company to comply with all wholesale performance requirements and remedy/penalty
6 regimes, including the Qwest Performance Assurance Plan ("QPAP"). This condition also
7 requires the Merged Company to track key wholesale performance levels to facilitate pre-and
8 post-merger comparisons. Furthermore, if a CLEC identifies deficiencies, the condition makes
9 clear the CLEC can bring the matter to the Commission.

10 **c. Require the Merged Company to waive right to seek rural exemption.**

11 Charter urges the Commission to condition its approval of the Application on
12 CenturyLink's agreement to waive its right to seek exemption for rural telephone companies
13 under Section 251(f)(1), and to waive its right to seek suspensions and modifications for rural
14 carriers under section 251(f)(2) of the Act.¹⁶ Charter asserts that CenturyLink has used the Act's
15 rural exemption in an anti-competitive manner to avoid its section 251(b) and (c) obligations.¹⁷

16 The condition recommended by Charter is not necessary. Stipulated condition 31
17 specifies that CenturyLink and all of its affiliates will comply with 47 U.S.C. sections 251 and
18 252, and that CenturyLink will "not seek to avoid any of its obligations on the grounds that
19 Qwest Corporation is exempt from any of the obligations pursuant to sections 251(f)(1) and
20 251(f)(2)."

21 The Transaction does not facilitate CenturyLink's use of the rural exemption.
22 Accordingly, it is not appropriate to use the Transaction as vehicle to insulate CLECs from
23 CenturyLink's use of the exemption. Whether CenturyLink's operating companies will be

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25 ¹⁵ Joint CLECs/23, Gates/18.

26 ¹⁶ Charter Fiberlink/14, Pruitt/14-16.

¹⁷ Charter Fiberlink/14, Pruitt/14-16.

1 eligible for the rural exemption turns on the criteria of the Act, and this is where CLECs should
2 find protection from non-competitive use of the rural exemption.

3 **d. Require merged Company to extend Qwest interconnection agreements by**
4 **four years, rather than three.**

5 Sprint recommends that the Commission require CenturyLink to extend Qwest's
6 interconnection agreements ("ICAs") by four years to reduce the costs CLECs incur to enter into
7 the agreements. Sprint acknowledges that CenturyLink has agreed to extend Qwest ICAs by
8 three years, but asserts a "four-year extension is more appropriate as it will give interconnecting
9 parties like Sprint additional time to work under the existing ICAs."¹⁸ Sprint's observation that
10 four years is longer than three years is not a compelling reason to require a four-year, rather than
11 three-year, extension and this proposed condition should be rejected.

12 **e. Extend the interconnection agreements of CenturyLink's ILECs operating in**
13 **Oregon.**

14 Sprint asks the Commission to require CenturyLink to extend existing CenturyLink ICAs
15 in addition to extending the Qwest ICAs. Sprint asserts this condition is necessary to spread the
16 benefits realized from the merger to wholesale customers and also, to shield competitors from
17 costs associated with negotiating ICAs after current ICAs expire. The interests that Sprint seeks
18 to protect are not those that are appropriately protected in connection with the Application.

19 First, Oregon statute requires the Commission to ensure the merger does not cause harm
20 to customers; it does not require the Commission to ensure benefits of the merger are passed
21 through to customers. Second, to the extent that competitors may need to negotiate new ICAs
22 with CenturyLink's operating companies, this need does not arise from the merger. Instead, it is
23 a consequence of existing ICAs expiring according to their terms.

24 ///

25 ///

26 ¹⁸ Sprint/1, Pruitt/26.

1 will combine the operations of the CenturyLink and Qwest operating companies is not
2 warranted.

3 **g. Require the Merged Company to commit to Single Point of Interconnection**
4 **per LATA.**

5 Charter urges the Commission to require that CenturyLink agree to give competitors the
6 option to interconnect with the Merged Company at a single point of interconnection per local
7 area and transport area (“LATA”).²² This proposed condition does not address a potential harm
8 of the Transaction. If the Transaction is approved, the Merged Company will be required to
9 provide competitors a point of interconnection for each ILEC, as Qwest and CenturyLink are
10 required to do today. Charter has not shown that it is appropriate to require, as a condition of
11 approval of this Transaction, that competitors be benefited by a more beneficial point of
12 interconnection obligation than is required by law.

13 **h. Require the Merged Company to comply with federal and state law**
14 **regarding access to directory assistance and listings.**

15 Charter recommends that the Commission impose a condition requiring CenturyLink to
16 “comply with federal and state law as it relates to their directory assistance and directory listings
17 responsibilities in all their ILEC territories just as Qwest does today.”²³ This proposed condition
18 is not necessary because it is redundant to one of the stipulated conditions. Stipulated condition
19 31 states that CenturyLink and all of its ILECs will comply with U.S.C. Sections 251 and 252.

20 **i. Require Merged Company to extend commercial and wholesale agreements**
21 **and intrastate tariffs.**

22 Stipulated condition 28b requires CenturyLink to extend by 18 months Qwest’s
23 commercial and wholesale agreements, at terms and conditions in place on the Transaction
24 closing date (“Closing Date”). The condition also specifies that the contract terms offered under

25 _____
26 ²² Charter Fiberlink/14, Pruitt/13.

²³ Charter Fiberlink/14, Pruitt/17.

1 these agreements will be offered to contract holders for an additional 18 months. Stipulated
2 condition 28c requires CenturyLink to extend Qwest's intrastate tariffs, without increasing rates
3 or modifying terms and conditions, for at least 12 months after the Closing Date.

4 The Joint CLECs ask the Commission to require CenturyLink to modify these conditions
5 to require CenturyLink to agree to extend wholesale and commercial agreements and intrastate
6 tariffs by at least three years and up to five years, and to maintain the terms and conditions of all
7 in place as of the date of the Application, as opposed to those in place on the Closing Date.

8 Commercial agreements arise under 47 U.S.C. section 271 or because the BOC
9 voluntarily offers such agreements. Most of these agreements relate to services that formerly
10 were within the scope of unbundled network elements under section 251(c), but subsequently
11 have been found by the FCC to not meet the impairment standard. A BOC is free to offer such
12 elements at rates that are market-based, and accordingly, it is not necessarily appropriate to apply
13 to these agreements the same conditions applied to ICAs.

14 Furthermore, the extension of the wholesale and commercial agreements and tariffs to
15 which CenturyLink has already stipulated does benefit competitors. As a general matter, prices
16 for commercial/wholesale agreements can be altered and services can be terminated at any time,
17 consistent with their terms. CenturyLink's commitment to extend the terms of existing
18 commercial/wholesale agreements and tariff conditions by a certain period provides the
19 competitors a benefit to which they are not entitled absent the merger.

20 Requiring CenturyLink to extend Qwest's intrastate tariff terms and conditions is also not
21 appropriate. Intrastate tariffs basically govern two types of services used by competitive
22 carriers— switched and special access. If the Transaction is finalized, these services will still be
23 regulated under the Qwest price plan. Under this plan, switched access rates are capped until at
24 least September 2013 and future changes are an issue in the ongoing Oregon Universal Service
25 Fund reform docket. The Qwest price plan allows the company to increase DSI rates by an
26

1 inflation factor. The Commission has already determined DS3 services are competitive and
2 deregulated DS3 rates years ago.

3 The Joint CLECs also ask the Commission to require CenturyLink to toll the extension of
4 the ICAs from the date CenturyLink filed its Application, rather than from the Closing Date.
5 The primary rationale underlying this request appears to center around the timing of one carrier's
6 Regional Commitment Program ("RCP") plan effective dates.²⁴ The RCP plan covers special
7 access services and is offered in Qwest's interstate tariffs. Therefore, it is the FCC that
8 determine whether conditions are needed to address concerns related to the RCP plan.

9 Additionally, the Joint CLECs' allegations that Qwest has attempted to game the timing
10 of the extension by raising rates for certain services prior to the closing date were addressed by
11 Qwest and CenturyLink witnesses. These witnesses rebutted the Joint CLECs' assertion the
12 price changes were made for the purpose of locking competitors into higher rates over the
13 extended period for the ICAs.

14 The Joint CLECs also urge the Commission to extend the terms of interstate tariffs by
15 three to five years and at minimum, three years.²⁵ A condition extending these tariffs is not
16 necessary. Applicant has agreed to freeze interstate tariffs for a period of 12 months in the
17 settlement agreement it entered into with Integra. Because a company cannot discriminately
18 offer tariffs rates to only one customer, all carriers will be eligible to receive service at the frozen
19 rates.

20 To the extent the Joint CLECs want an extension of the interstate tariffs beyond the 12
21 months agreed to by CenturyLink, the FCC is the proper authority to address the issue. The Joint
22 CLECs assert that the Commission previously approved a condition covering interstate tariffs in
23 the Frontier/Verizon merger, but that condition was not part of a global settlement with Staff. It
24

25 _____
26 ²⁴ Joint CLECs/23, Gates/29-33.

²⁵ Joint CLECs/23, Gates/28-30.

1 was negotiated by a group of carriers as a supplemental stipulation and then accepted by the
2 Commission.

3 **j. Require the Merged Company to lower intrastate and interstate access rates.**

4 Sprint contends that the Stipulation does not address issues raised in its testimony
5 regarding the need for access rate reductions.²⁶ This is correct. The administrative law judge
6 (“ALJ”) in this proceeding determined that “the level of access charges is not an appropriate
7 issue to be considered within the scope of this proceeding.” The ALJ also concluded that a
8 carrier may raise the issue to the Commission at any time by petition, and that an independent
9 investigation into rates is a better mechanism to review rates.²⁷

10
11 **k. Require the Merged Company to adhere to an Additional Performance Assurance Plan.**

12 Stipulated condition 34 requires the Merged Company to maintain wholesale service
13 quality for services provided by Qwest as of the Closing Date of the Transaction. This condition
14 specifies that the Merged Company will not seek to modify the Qwest Performance Indicator
15 Definition (“QPID”) or Qwest Performance Assurance Plan (“QPAP”) for at least 18 months
16 from the Closing Date. The condition also specifies that although the Merged Company may
17 seek to modify the QPAP after 18 months have passed, it may not seek to eliminate or withdraw
18 the QPAP for an additional three years.

19 Condition 34 requires the Merged Company to compare the quality of Qwest’s wholesale
20 service post-merger with the quality pre-merger, and condition 35 requires the Merged Company
21 to report these comparisons to Commission Staff quarterly. Condition 34 specifies that if the
22 Merged Company fails to maintain performance levels in Qwest legacy areas, the Merged
23 Company must, within 30 days, conduct a root cause analysis to determine why and develop
24

25 _____
26 ²⁶ Sprint Objections/8-10.

27 ²⁷ November 3, 2010 Ruling.

1 proposals to remedy each deficiency. The Merged Company must submit these proposals to
2 CLECs, CMRS carriers and Staff for review and comment. If the Merged Company does not
3 resolve performance deficiencies, a CLEC or CMRS carrier may request a resolution or
4 wholesale service quality proceeding before the Commission.

5 Condition 36 requires the Merged Company to provide to wholesale carriers, on a going-
6 forward basis, information such as contact lists and account manager information. Condition 37
7 requires the Merged Company to make available to each wholesale carrier in the legacy Qwest
8 ILEC service territory the types and level of data, information, and assistance for legacy Qwest's
9 wholesale business practices and procedures and OSS functions that legacy Qwest made
10 available as of the Closing Date. Condition 38 requires the Merged Company to ensure that
11 wholesale and CLEC operations are sufficiently staffed by trained employees and supported,
12 relative to wholesale order volumes.

13 The Joint CLECs assert that these conditions are not sufficient to ensure that the quality
14 of wholesale service in legacy Qwest areas does not degrade after the Transaction is finalized.
15 The Joint CLECs ask the Commission to impose an additional Performance Assurance Plan
16 ("APAP"). The APAP is a five year plan that also would require the Merged Company to
17 monitor its wholesale service quality, but includes financial penalties to incent the Merged
18 Company "to not pursue merger savings at the expense of wholesale service quality[.]"²⁸

19 The Joint CLECs have failed to establish that the stipulated conditions are not sufficient
20 protection against degradation of wholesale service quality. Further, the CLECs' proposal to
21 subject the Merged Company to financial penalties has not been sufficiently vetted in this
22 proceeding. In an affidavit filed on January 7, 2011, Qwest senior director of public policy,
23 Michael Williams, asserted that his analysis of Oregon data shows that the proposed APAP
24 would lead to substantial penalties even if performance did not vary between test periods.²⁹ The

25 _____
26 ²⁸ Joint CLECs/23, Gates/45.

²⁹ Michael Williams Affidavit submitted on January 7, 2011 and corrected on January 12, 2011.

Commission should not subject to the Merged Company to performance incentives that may have unintended consequences.

I. Require the Merged Company to agree not seek to reclassify any Qwest wire center as impaired.

Stipulated condition 39 specifies that CenturyLink will not seek to reclassify any Qwest Oregon wire centers for purposes of section 251 of the Act, or file a petition under section 10 of the Act seeking forbearance from any section 251 or 271 obligation or dominant carrier regulation in any Qwest Oregon wire center before June 1, 2012. The Joint CLECs assert that the moratorium in condition 39 is too short and ask the Commission to lengthen the period to three to five years, but no less than three years.

The modification to condition 39 does not address a potential harm of the Transaction. Whether a Qwest wire center will satisfy the criteria for impairment will turn on the level of competition. Neither request can be granted until a certain level of competition is present, and competitive carriers are protected from an inappropriate request by the terms of Act. The Transaction does not present the harm that a request for reclassification or for forbearance will be improperly granted.

Applicant has voluntarily agreed to not request that a legacy Qwest wire center be reclassified as impaired or seek forbearance from any section 251 or 271 obligation in a Qwest wire center until June 1, 2012, notwithstanding whether CenturyLink could show the criteria for either request are satisfied. This commitment is sufficient.

VII. The Commission should not impose the conditions recommended by the Coastal Intervenor.

The Coastal Intervenor recommend that the Commission impose conditions in addition to the 53 contained in the Stipulation. They urge the Commission to require the Merged Company to:

- 1 (1) construct diverse routing for the former Embarq service area in Lincoln and
2 Tillamook counties with a self-healing fiber ring architecture for traffic to and
3 from that service area; and
4 (2) connect Oregon internet data traffic at an Oregon internet exchange when the
5 traffic originates and terminates in Oregon and at least one end of the connection
6 is on CenturyLink's or Qwest's network.

7 Condition 26 requires CenturyLink to construct a physical communication link between
8 the Cities of Lincoln City and Newport, Oregon within 24 months following the close of the
9 Transaction. It also requires CenturyLink to meet with Staff and other interested parties during
10 the engineering phase to make certain that Staff is satisfied that the facility is sized adequately to
11 handle the expected demand.

12 The Coastal Intervenors object to this condition on the ground it does not sufficiently
13 address their concerns regarding availability and quality of service in Tillamook and Lincoln
14 counties. These parties ask the Commission to require CenturyLink to also construct diverse
15 routing for the former Embarq service area in Lincoln and Tillamook Counties, with a self-
16 healing fiber ring architecture for traffic to and from that service area. These parties also ask the
17 Commission to require CenturyLink to connect Oregon internet data traffic at an Oregon internet
18 exchange when the intranet traffic both originates and terminates in Oregon and at least one end
19 of the connection is on CenturyLink or Qwest's network.³⁰

20 Staff does not recommend that the Commission impose these conditions. The
21 construction of a physical communication link addresses concerns regarding lack of network
22 redundancy. To the extent that stakeholders want additional protection, it is not necessarily
23 appropriate to impose those costs on the Merged Company. CLECs in the affected areas are also
24 able to address the redundancy issues.³¹ The Commission should not require the CenturyLink or
25 Qwest to take on these costs simply because these companies are merging.

26 Furthermore, the ALJ has ruled that "questions regarding the specific direction of
resources or managerial decision to be made by [] the merged company with

³⁰ Coastal Intervenors Objections/5-6.

³¹ Staff/100, Dougherty/31.

1 respect to the provision of particular services to a particular service area[,]” are
2 beyond the scope of this docket.³²
3 condition of the merged entities and are beyond the scope of this docket.

4 The fact that the Merged Company agreed to a particular condition advocated by Staff based on
5 its knowledge of the coastal situation should not result in expansion of the condition, especially
6 in light of the ALJ’s ruling.

7 With respect to the conditions regarding internet service providers, if the Application is
8 approved, ISP operators can contract with the incumbent for Special Access services using the
9 physical facility required by stipulated condition 26. These services would be provided at
10 existing tariff rates.³³

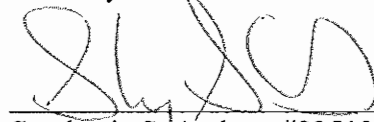
11 **VIII. Conclusion.**

12 For the foregoing reasons, the Commission should approve the Stipulation and impose
13 the two conditions recommended by Staff and CUB. The Commission should decline to impose
14 the additional conditions recommended by competitive carriers and the Coastal Intervenors.

15 DATED this 25th day of January 2011.

16 Respectfully submitted,

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19 

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24 ³² See August 26, 2010 Ruling, Disposition: Petition to Intervene Granted in Part and Denied in
25 Part at 4-5, *quoting* UM 1416 March 12, 2009 Ruling (ALJ relying on previous Commission
26 order in merger proceeding of Embarq and CenturyTel to describe the limitations on issues the
27 Coastal Intervenors could raise).

28 ³³ See Staff/100, Dougherty/31.

1 **CERTIFICATE OF SERVICE**

2 I certify that on January 25, 2011, I served the foregoing Brief upon the parties in this
3 proceeding by electronic mail and by sending a true, exact and full copy by regular mail, postage
4 prepaid, or by hand-delivery/shuttle, to the parties accepting paper service.

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