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um 1484

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May 9, 2011

Appellate Court Records Section
Supreme Court Building
1163 State Street
Salem, OR 97301-2563

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MAY 10 2011

Public Utility Commission of Oregon
Administrative Hearing Division

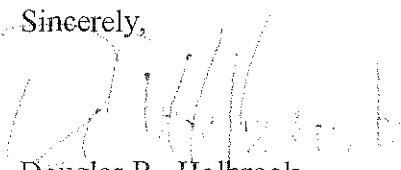
Re *City of Lincoln City, Lincoln County & Tillamook County v. Oregon Public Utility Commission*
Petition for Judicial Review of Order in UM 1484

Dear Records Section,

I enclose for filing an original Petition for Judicial Review, together with Petitioners' filing fee in the amount of \$848.00.

If you have any questions or concerns, please contact me.

Sincerely,


Douglas R. Holbrook

cc: (Service list on Certificate of Service)

[110509 ltr to CTA Records.wpd]

RECEIVED

MAY 10 2011

Public Utility Commission of Oregon
Administrative Hearing Division

DOCKETED

UM 1484

IN THE COURT OF APPEALS OF THE STATE OF OREGON

In the Matter of CenturyLink, Inc. Application for Approval of Merger between CenturyTel, Inc.
and Qwest Communications International, Inc.,

City of Lincoln City, Lincoln County, Tillamook County, and Parker Telecommunications,
Intervenor/Petitioners

Public Utility Commission of Oregon,
Respondent.

PUC Case No. UM 1484

CA A _____

PETITION FOR JUDICIAL REVIEW

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MAY 10 2011

Public Utility Commission of Oregon
Administrative Hearing Division

1.

City of Lincoln City, Lincoln County, Tillamook County and Parker Telecommunications
give notice of a Petition for Judicial Review from the Order entered in this case on March 24,
2011, by the Oregon Public Utility Commission in case number UM 1484.

2.

The adverse party is: Public Utility Commission of Oregon. Petitioners were parties to
the administrative proceeding which resulted in the Order for which review is sought.

3.

The names of the parties to this appeal and their attorneys are:

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DOCKETED

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4.

The names, addresses, telephone number and e-mail addresses as available of the parties who have appeared in the action, and their attorneys are:

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Advanced TelCom, Inc.
Electric Lightwave, LLC
Eschelon Telecom of Oregon, Inc.
Oregon Telecom Inc.
United Telecommunications Inc. dba Unicom
Covad Communications Company
PriorityOne Telecom, Inc.
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5.

Petitioners designate the testimony, hearing file, the record of all hearings, and all exhibits which relate to the portion of the Order which pertains to the Petitioners' motions, testimony and arguments to the Public Utility Commission regarding the Petitioners' status as intervenors and consideration of the conditions Petitioners asked the Public Utility Commission to impose on the merger approval, and condition 26 of the stipulation, rejected by the Commission in its Order. The designated record also includes Petitioners' Motion to Certify Questions to the Commissioners, and any written argument and orders pertaining thereto.

6.

The notice of Petition for Judicial Review is filed within 60 days of the entry of the attached order.

7.

Statement of Points by Petitioners

1. Whether the Public Utilities Commission of Oregon erred in adopting for this merger the approval standard of whether the transaction serves the public interest by causing "no harm."

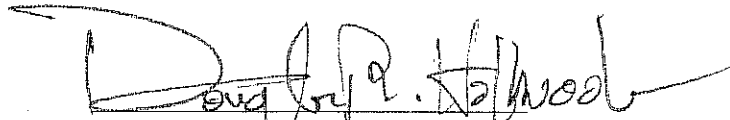
2. If the merger approval standard was incorrect, whether the Public Utilities Commission of Oregon abused its discretion or made an error in legal interpretation thereby

causing it to dismiss Petitioners proposed condition language and remove Condition 26 of the settlement.

3. In the alternative to point 2, if the merger approval standard used was correct, whether the Public Utilities Commission of Oregon abused its discretion or made an error in legal interpretation in applying its "no harm" merger approval standard thereby causing it to dismiss Petitioners proposed condition language and remove Condition 26 of the settlement.

4. Whether the Public Utilities Commission of Oregon's decision to exclude Petitioners' proposed condition language and revision of Condition 26 is supported by the substantial evidence.

DATED this 9th day of May, 2011.



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ORDER NO. 11 095

ENTERED MAR 24 2011

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1484

In the Matter of

CENTURYLINK, INC.,

Application for Approval of Merger
between CenturyTel, Inc., and Qwest
Communications International, Inc.

ORDER

DISPOSITION: APPLICATION GRANTED WITH CONDITIONS

I. INTRODUCTION

In this Order, we grant the Application for Approval of Merger between CenturyTel, Inc. (CenturyTel) and Qwest Communications International, Inc. (Qwest). Our approval is conditioned upon compliance with the requirements set forth in Appendix A to this Order relating to Commission access to financial information, reasonableness review, notification of changes and specific post-merger commitments and responsibilities of CenturyLink, Inc. (CenturyLink or Applicants).

II. PROCEDURAL HISTORY

On May 24, 2010, CenturyLink filed the Application for Approval of Merger between the two companies and their regulated subsidiaries, and requested that the Commission promptly issue a Protective Order. The application was accompanied by CenturyLink's direct testimony in support of the application. Qwest simultaneously filed a Petition to Intervene with supporting direct testimony. General Protective Order No. 10-192 was entered on May 26, 2010.

On June 3, 2010, pursuant Oregon Revised Statute (ORS) 774.180, the Citizens' Utility Board of Oregon (CUB) filed its Notice of Intervention and became a party to the proceeding. A prehearing conference was held on June 8, 2010.

Petitions to Intervene were filed by Telecommunications Ratepayers Association for Cost-based and Equitable Rates (TRACER); XO Communications Services, Inc. (XO); tw telecom of Oregon LLC (tw telecom); Charter Fiberlink

OR-CCVII, LLC (Charter); Integra Telecom of Oregon, Inc., Advanced TelCom, Inc., Electric Lightwave, LLC, Eschelon Telecom of Oregon, Inc., Oregon Telecom Inc., and United Telecommunications Inc., d/b/a Unicom (collectively, "Integra"); Level 3 Communications LLC (Level 3), PriorityOne Telecommunications, Inc. (PriorityOne); 360networks (USA), Inc. (360networks); Warm Springs Telecommunications Company, Sprint Communications Company, L.P., Nextel West Corp., and Sprint Spectrum (collectively, "Sprint"); T-Mobile West Corporation (T-Mobile); Covad Communications Company (Covad); and Parker Telecommunications (Parker). All became parties to the proceeding.

The petition to intervene filed by the Northwest Public Communications Council (NPCC) was opposed by Qwest. By ruling of August 10, 2010, the administrative law judge (ALJ) granted the NPCC petition but imposed conditions upon its participation in the proceeding.

The amended petition to intervene filed by the City of Lincoln City, Lincoln County, and Tillamook County (collectively, the "Coastal Entities") was opposed by CenturyLink. By ruling of August 26, 2010, the ALJ granted the amended petition to intervene in part and denied in part, limiting the scope of the issues the Coastal Entities could raise in the proceeding. In that ruling, the ALJ concluded that Lincoln City had an interest in seeing that the proposed merger would not harm the financial ability to serve its customers, and was therefore granted party status. However, questions regarding the specific direction of resources or managerial decisions with respect to the provision of particular services to a particular service area were beyond the scope of the proceeding.

Several prehearing conferences were held and a schedule for the proceeding was established. Pursuant to that schedule, on August 24, 2010, direct testimony was jointly filed by tw telecom,¹ Covad, Level 3, and Charter (collectively the Joint CLECs), and Integra. Charter, Level 3, and Integra each also filed opening testimony on its own behalf. CUB, the Commission Staff (Staff), 360networks², Sprint, and Parker also submitted direct testimony. Qwest and CenturyLink filed rebuttal testimony on September 21, 2010. Over the course of the following months, there was virtually continuous litigation on matters of discovery requests and relevance of testimony among the Applicants and various intervenors.

On, November 9, 2010, CenturyLink filed a Settlement Agreement among CenturyLink, Qwest and Integra (Integra Agreement) resolving, via compromise, all of the issues raised by Integra. Section "A. Definitions" set forth the agreement's special definitions: "Closing Date," "Merged Company," "Operational Support Systems," "OSS Interfaces," and "Qwest Corporation." Section "B. Terms" provided 15 detailed conditions relating to the Merged Company's conduct involving its relationships with

¹ On February 11, 2011, CenturyLink and Qwest filed a settlement agreement with tw telecom then withdrew from the proceedings.

² On October 21, 2010, 360networks filed a letter indicating that it had reached an agreement with the Applicants to amend its existing Oregon interconnection agreement and withdrew from the proceedings. The agreement was filed with the Commission by the Applicants on October 29, 2010.

wholesale customers. Pursuant to the section titled "*C. Process for Treatment of Agreement*," Integra agreed to seek the withdrawal of all testimony and witnesses and to support approval of the application. None of the prefiled Integra testimony had been entered into the record at the time of the withdrawal agreement.

Supplemental testimony on federal filings by the Applicants under the Hart-Scott-Rodino (HSR) Act was filed on November 12, 2010, and the Applicants filed responsive testimony on November 19, 2010.

On December 2, 2010, CenturyLink, Qwest, Staff, and CUB, filed a stipulation (Stipulation), resolving all issues except two: the submission of an annual report with statistical analyses of Customer Broadband Complaint Trouble Reports and the "Most Favored State" (MFS) condition. The conditions to which CenturyLink and Qwest agreed in the settlement with Integra were incorporated into various sections of the Stipulation. None of the other intervening parties joined in the Stipulation. The terms of the Stipulation may be briefly described as follows:

Conditions 1-12 and 14 cover general compliance with Oregon law and Commission rules and provide protections regarding tariff, service, or rate changes for retail and wholesale customers post-closing. The Commission retains ongoing rights to access documents and records about changes to the transaction and other matters.

Condition 13 is a Century commitment to spend \$45 million in broadband deployment over five years, 25 percent by the end of 2012, supported by a detailed plan and reporting requirements.

Conditions 15-19 are financial in nature, relating to debt leverage, asset encumbrance, avoiding burdens upon customers for the acquisition premium and adjustments to the Qwest price plan and Commission authority to approve future transactions involving the Merged Companies' Oregon assets.

Conditions 20-23 address service quality standards and reporting commitments with respect to specific quality metrics, and the condition of specific network assets and planned capital expenditures.

Conditions 24-26 relate to compliance with state and federal safety standards and commitments to prior obligations including the construction of a physical link between the City of Lincoln City and the City of Newport.³

Conditions 27-41 address wholesale issues, including transition of operating support systems (OSS) and commitments to share information regarding software

³ By Ruling of August 26, 2010, the ALJ declined to add the issue of wireline redundancy within north Lincoln County and Tillamook County to the proceeding and, by ruling of Sept 23, 2010, denied a request of the Coastal Entities to certify the matter to the Commission for review. Nevertheless, upon independent Staff review of the issue, the matter was addressed by the parties in the Stipulation.

and system transitions and provision of stable rates, terms, conditions, and service quality for wholesale customers during the transition.

Condition 42 preserves consumer rights with respect to long distance service, including notification of carrier changes and provision of a time period for waiver of change charges.

Conditions 43-50 address Oregon Telecommunications Assistance Program (OTAP) reporting requirements and communication commitments ensuring the preservation of data exchange. CenturyLink will maintain its OTAP advisory board membership and working relationship with OTAP.

Conditions 51-53 are commitments to comply with all affiliated interest reporting requirements.⁴

On December 8, 2010, Staff and CUB filed testimony with respect to the two "open" issues—Broadband Complaint Trouble Reporting and the MFS condition. On December 14, 2010, the Joint CLECs, Sprint, Charter, and the Coastal Entities filed testimony opposing adoption of the Stipulation absent significant changes and additions.

Hearings were held on December 16 and 17, 2010. Pursuant to agreement among the parties, prefiled testimony, numerous exhibits and testimony, both written and oral, and from other jurisdictions were admitted at and after the close of the hearings. Opening and Reply Briefs were filed simultaneously by all parties on January 25, 2011, and February 1, 2011, respectively.

III. DESCRIPTION OF THE TRANSACTION

A. Transaction Parties

CenturyLink is a publicly traded holding company with incumbent local exchange operations in 33 states, and the ultimate parent company of Incumbent Local Exchange Carrier (ILEC) CenturyTel of Oregon, Inc., CenturyTel of Eastern Oregon, Inc., and United Telephone Company of the Northwest d/b/a CenturyLink, serving approximately 109,000 access lines in Oregon. Qwest Corporation is a publicly traded holding company with incumbent local exchange operations in 14 states serving approximately 10.3 million access lines, including approximately 802,000 access lines in its Oregon territory.⁵ Each of the CenturyLink and Qwest subsidiary ILEC companies holds the appropriate certificates of public convenience and necessity for the provision of local exchange service within their respectively-designated Oregon service areas. Other CenturyLink subsidiaries registered in Oregon include CenturyTel Long Distance, LLC; CenturyTel Solutions, LLC; CenturyTel Fiber Company II, LLC; Embarq

⁴ See also [Errata] Testimony in Support of Stipulation by the Parties to the Stipulation (Dec 10, 2010).

⁵ Application at 8-10.

Communications, Inc.; and Embarq Payphone Service, Inc. None of them are affected by the Transaction.⁶

B. The Structure of the Transaction

The Application was submitted pursuant to Oregon Revised Statutes (ORS) 759.375 and 795.380 and Oregon Administrative Rule (OAR) 860-027-0025.⁷ The merger transaction may be briefly described as follows. CenturyLink⁸ and its subsidiary, SB44 Acquisition Company (Acquisition Company),⁹ along with Qwest, entered into an Agreement and Plan of Merger on April 21, 2010. Under the terms of the Agreement, Qwest will merge with Acquisition Company, after which Acquisition Company will cease to exist, and Qwest will become a direct, wholly-owned subsidiary of CenturyLink. The merger is a stock-for-stock transaction, in which Qwest shareholders will receive 0.1664 shares of CenturyLink for each share of Qwest common stock. There will be no incremental debt associated with the transaction. CenturyLink shareholders will hold 50.5 percent of the outstanding stock and Qwest shareholders will hold 49.5 percent of the combined company. Four Qwest directors will be added to the CenturyLink Board of Directors, raising the number from 13 to 17.¹⁰

C. Post- Transaction Legal and Regulatory Status

The new combined entity will operate in 37 states. Upon consummation of the merger, Qwest will become a direct, wholly-owned subsidiary of CenturyLink and all Qwest subsidiaries, including Qwest Corporation, will be indirectly owned and controlled by CenturyLink, but will not experience any change in their existing corporate status or structure. All of the above-named ILECs' identities as certificate holders and service providers remain unchanged. The end user customers will continue to receive service from the same ILEC and at the same rates, terms and conditions immediately in effect prior to the transaction.¹¹

IV. STANDARDS OF COMMISSION REVIEW

ORS 759.375 provides, in relevant part:

(1) A telecommunications utility doing business in Oregon shall not, without first obtaining the * * * Commission's approval of such transaction:

⁶ CTL/100, Jones/7-8 (May 24, 2010).

⁷ CenturyLink asserts in its Application that Qwest was exempt from the transaction and, as a consequence, did not include Qwest as a party to the Application. Qwest was therefore an intervening party in the proceeding rather than a joint applicant. (Application at 2).

⁸ At the time the agreement was executed, CenturyLink had not yet changed its name from CenturyTel, which is the name that appears in the Merger documents.

⁹ Acquisition Company is a direct wholly-owned subsidiary of CenturyLink created solely to effectuate the transaction.

¹⁰ Application at 3-4.

¹¹ CTL/100, Jones/6-7.

* * * * *

(c) By any means whatsoever, directly or indirectly, merge or consolidate any of its lines, plant, system or other property whatsoever, or franchise or permit to maintain or operate any telecommunications utility property, or perform any service as a telecommunications utility, or any part thereof, with any other * * * telecommunications utility.

ORS 759.380 further provides:

(1) No telecommunications utility shall, directly or indirectly, purchase, acquire or become the owner of any of the stocks or bonds or property utilized for utility purposes * * * of any other * * * telecommunications utility unless authorized to do so by the * * * Commission.

(2) Every contract by any telecommunications utility for the purchase, acquisition, assignment or transfer to it of any of the stock of any other telecommunications utility * * * without the approval of the commission shall be void * * *.

When considering whether to approve this transaction, the standard for approval applied by the Commission is whether the transaction serves the public interest by causing "no harm."¹²

V. DISCUSSION OF UNCONTESTED CONDITIONS

The Stipulation among the Applicants, Qwest, Staff, and CUB, the provisions of which are briefly outlined above, require the Applicants to comply with numerous conditions post-merger. Uncontested conditions—the majority of the conditions outlined above at pages 3-4 and to which parties not signatories to the Stipulation neither opposed nor indicated needed augmentation—were supported and described in the Errata Joint Testimony.

We have reviewed the proposed language with respect to each of these uncontested conditions in the Settlement Agreement and find that on balance they contribute to a finding by the Commission that the transaction is expected to cause no harm to the Applicants' customers and competitors and will further the public interest.

¹² This standard has been recently applied in both the CenturyTel/Embarq merger, Order No. 09-169 in Docket UM 1416 and the acquisition of Verizon Northwest by Frontier Corporation, Order No. 10-067 in Docket UM 1431, each citing Order No. 95-526 involving a transaction under ORS 759.375(1)(c) and ORS 759.380. This is a lesser standard than the "net benefits" test employed under ORS 757.511 for energy utility acquisitions. See also Order No. 08-617, Docket UP 249 and Order No. 02-466, Docket UP 195.

Accordingly, we adopt these conditions, included in Appendix A hereto, as an integral part of this Order.

VI. DISCUSSION OF CONTESTED CONDITIONS

CenturyLink and Qwest jointly briefed the contested issues in the proceeding, defending each of the conditions contained in the Settlement Agreement contested by Joint CLECs,¹³ TRACER; Sprint, Nextel, and T-Mobile (collectively, "Wireless Carriers") and Coastal Entities, which now include Parker.

Staff and CUB also defended imposition of the 53 Conditions in the Settlement Agreement as meeting the "in the public interest, no harm" standard, while noting the need for two additional conditions, discussed below.¹⁴ However, with respect to wholesale conditions, CUB believes that the existing conditions satisfy the "public interest, no harm" standard and that the imposition of further wholesale-related requirements would go beyond meeting the standard and amount to "icing on the cake." CUB also indicated that the subject matter was generally beyond its expertise and adopted Staff arguments with respect to the objections of other intervenors.¹⁵

TRACER, Coastal Entities, Joint CLECs, and Wireless Carriers filed briefs opposing portions of the settlement agreement conditions as either being insufficient, in need of clarification or not responsive to their concerns. We address each contested condition in the order in which it appears in the Settlement Agreement. We discuss in those instances where intervenors propose new paragraphs between the numbered conditions.

Conditions 8, 9, and 10. These conditions preclude advocacy by the Applicants in any general rate case before the Commission with respect to transaction-related changes in capital costs, one-time transition, transaction and branding costs and management costs. In referring to these conditions, along with others, Staff stated that they "adequately address Staff's concerns surrounding records, rates, tariffs, and reporting, including financial reporting."¹⁶ TRACER asserts that the term "regulated rate proceedings" is unclear as to whether Qwest's pricing plan flexibility will "eviscerate any protections for retail customers,"¹⁷ and proposes clarifying language.¹⁸

Staff replies that no clarification is necessary as the language is unambiguous and the language, as written, is adequate to protect retail ratepayers. "Further, a common-sense reading of the conditions shows that TRACER's concerns are not well founded."¹⁹

¹³ Joint CLECs constituent members at the time briefs were filed were XO, tw telecom, Covad, PriorityOne, and Charter.

¹⁴ Staff Opening Brief at 1-2; CUB Opening Brief at 3-6.

¹⁵ CUB Opening Brief at 6, CUB Reply Brief at 3.

¹⁶ [Errata] Joint Testimony of Staff, CUB, CenturyLink and Qwest, (Joint Testimony) at 24 (Dec 10, 2010).

¹⁷ TRACER Opening Brief at 7.

¹⁸ *Id.* at 8-9.

¹⁹ Staff Reply Brief at 5.

Resolution

We have reviewed the subject language in Conditions 8, 9, and 10 and do not agree with TRACER that the conditions lend themselves to any interpretation other than a plain language of the text. Furthermore, were CenturyLink to advocate a position contrary to the clear intent of the language in those conditions in the Settlement Agreement, the Commission would note their violation of the terms and respond accordingly. The changes to the terms of the Settlement Agreement proposed by TRACER are rejected.

Condition 26. This condition provides that “CenturyLink will construct a physical communication link between the Cities of Lincoln City and Newport, Oregon within 24 months following the close of the transaction.” In support of the condition, “CenturyLink will meet with Staff and other interested parties during the engineering phase to make certain that Staff is satisfied that the facility is sized adequately to handle the expected demand. This commitment will address 911 network concerns raised by Staff, CUB and other Intervenors.”²⁰

Coastal Entities contend that the settlement testimony “fails to explain any factual basis linking the condition to the actual network problems detailed in [testimony presented at the hearing]” and that the Staff witness was not an expert in telecommunications systems.²¹ Rather, Coastal Entities argue that its expert testimony makes the case for a diverse fiber pathway connection with the Sheridan office in order for the remote switches to reliably function and provide 911 service. Coastal Entities also propose that CenturyLink connect Oregon internet data traffic at an Oregon exchange when both the originating and terminating points are in Oregon.²²

The Applicants assert that the instant proceeding is not the appropriate forum to address the relief Coastal Entities request and cite prior Commission rulings supporting its position and the Commission’s refusal to add specific infrastructure investments to the proceeding’s issues list.²³ Staff notes that the condition proposed by the Coastal Entities do not address potential merger-related harms and further assert that “CLECs in the affected areas are also able to address the redundancy issues.”²⁴

Resolution

In ruling dated August 26, 2010, the ALJ declined to permit the inclusion of the coastal infrastructure in this proceeding. Notwithstanding that ruling, the Settlement Agreement included Condition 26. In direct testimony, the Staff witness indicated that, in the course of preparing Staff’s positions in this proceeding, inquiries were undertaken with various agencies and it was concluded that there were safety issues

²⁰ Joint Testimony at 13.

²¹ Coastal Entities’ Brief at 2-3, citing Parker/100-400.

²² *Id.* at 3-4 and testimony cited therein.

²³ Applicant’s Opening Brief at 44-45.

²⁴ Staff Opening Brief at 23.

relative to the telecommunications infrastructure in Lincoln and Tillamook counties and that the issue was discussed among the settling parties and ultimately included in the agreement. On that basis, testimony and argument in this previously-excluded issue had to be permitted.

We agree with ALJ Arlow that the issue of coastal infrastructure and public safety, while important, is not a proper issue to consider within the context of this proceeding and does not fall within the application of the "no harm" standard to this transaction. We therefore strike Condition 26 from the list of conditions to be required in the Order for our approval of the Application. However, as we previously indicated, intervenors Lincoln City, Lincoln County, Tillamook County and Parker Communications may petition the Commission, at any time, to open an investigation into the public safety concerns raised in the course of the proceeding.

Definitions to be inserted before Condition 27. The Joint CLECs propose the addition of definitions for "Closing Date," "Merger Closing Date," "Merged Company," "Merger Filing Date," "Operational Support Systems," "OSS," "OSS Interfaces" and "Qwest Corporation." No party, including Joint CLECs, commented on the need for the proposed definitions.

Resolution. Throughout the proceeding, the words Joint CLECs propose to define have been used without any indication of ambiguity or misunderstanding by any of the parties. Thus, the addition of the proposed definitions at the close of the proceeding without having been vetted during the evidentiary process, holds out the potential for disagreement or confusion without any advantage in the form of greater clarity or certainty. The proposed addition of definitions to be inserted before Condition 27 is rejected.

Condition 27. This condition sets forth numerous standards and requirements regarding CenturyLink's OSS and most critically, the timing, standards and preconditions to the integration of the Qwest OSS in Legacy Qwest Territory with CenturyLink's OSS. The condition is divided into Retail and Wholesale sections.

The brief Retail section provides that CenturyLink will notify the Commission at least 90 days prior to the conversion of "major Qwest/CenturyLink retail operations support systems" and provide specifics of the systems, changes and customer impacts. The condition also defines the affected systems. No party interposed any objection to the adoption of the Retail section language in the settlement agreement.

The Wholesale section of Condition 27 may be summarized as follows:

1. In Qwest legacy territory, the merged company will use the existing Qwest OSS system until July 1, 2013. After that date, CenturyLink will "provide a level of wholesale service quality that is not less than that provided by Qwest prior to the closing date with functionally equivalent support, data, functionality, performance, electronic flow

through and electronic bonding.” CenturyLink will not integrate Qwest’s OSS into CenturyLink’s OSS without complying with the following procedures as part of a detailed transition plan:

- a. **Plan:** CenturyLink will give the Commission and all CLECs 270 days notice before integrating systems. Upon request, CenturyLink will describe the system to be integrated, the surviving system and steps to assure integrity is maintained. CenturyLink will also identify planned contingency action in case it runs into significant problems. The Plan will be prepared by information technology experts with knowledge of both OSS systems. CLECs will be able to comment in a “forum” where the plan is filed as well as in the Qwest Change Management Process (CMP).
- b. **CMP:** CenturyLink will follow the existing CMP document.
- c. **Replacement/Retirement of Qwest OSS interface:**
 - i. Requires “sufficient acceptance” of the replacement interface by CLECs and wireless carriers, who will work with company to develop acceptance criteria. Testing will continue until accepted by “majority votes” of carriers. Carriers can’t withhold vote unreasonably. Process lasts until integration and migration of OSS completed. If CenturyLink and the CLECs cannot agree whether the activity is complete, the Commission will determine the completion date.
 - ii. CenturyLink will “allow coordinated testing” with CLECs and wireline carriers for up to 120 days.
 - iii. CenturyLink will provide carriers with free training and education on its OSS.
- d. **Billing Systems:** No billing system integration until July 1, 2013, assuming above procedures are not impacted. Changes to Legacy Qwest non-retail OSS will meet all “interconnection agreements” (ICA) billing provisions and be compliant with the Ordering and Billing Forum.

In the Joint Testimony of the parties to the Settlement Agreement, the witnesses asserted that the commitments in Condition 27 “will assure the Commission that Oregon wholesale customers will not be negatively impacted as a result of the Transaction.”²⁵ While joining in the Settlement Agreement, CUB acknowledged that it has no expertise in wholesale telecom issues and relied heavily on Staff’s analysis of wholesale conditions. After reviewing the Staff’s Opening Brief, CUB adopted Staff’s assessment of the additional conditions requested by non-stipulating parties.²⁶

²⁵ Joint Testimony at 18.

²⁶ CUB Closing Brief at 3.

The Applicants defended the Agreement, stating that the non-settling Joint CLECs' allegations of harm are based on "the unsupported assertion that CenturyLink plans to promptly uproot Qwest's OSS in Qwest territories and replace it with a CenturyLink OSS." Applicants note that the entire Qwest company is being acquired, including operations, personnel and experience, vitiating any pressure for immediate alterations in Qwest's OSS.²⁷ Furthermore, CenturyLink acknowledges that Qwest's OSS will be subject to its obligations under section 271 of the Telecommunications Act of 1996 (the "Act") and that it is committed to provide CLECs with "a level of wholesale service quality that is not materially less than that provided by Qwest prior to the Merger Closing date." The Applicants also contend that extending the Qwest OSS for three years (rather than two) is unreasonable. It goes beyond the period of vested interest of CLECs and the Commission Staff and CUB both concurred in the two year time frame.²⁸ Staff notes that it concurs with the collaborative approach of Condition 27 and that Joint CLEC's assertion about the need for third-party testing is unsupported in the record. Staff believes that the necessary protections for CLECs are contained in Condition 34 with respect to performance requirements.²⁹

The Joint CLECs assert that Condition 27 as it now stands is inadequate to ensure that post-merger OSS and performance levels do not deteriorate. Because the FCC has determined that OSS is a "network element," a CLEC must have nondiscriminatory access to preordering, ordering, provisioning maintenance and repair, and billing functions. The system that supplies those functions must be efficient, reliable and accurate. Joint CLECs assert that there is a high risk of degradation to the functionalities and capabilities currently available on the Qwest OSS systems.

Cost savings such as CenturyLink anticipates may well be achieved at the expense of inferior systems. Joint CLECs therefore propose to add language to Condition 27 c. "*Replacement or Retirement of a Qwest OSS Interface*" as newly-designated subparagraph iii., providing that, for any Qwest system that was previously subject to third-party testing (i.e., as part of the section 271 process), robust and thorough testing of the replacement system will occur to be certain it provides all functionalities to handle existing wholesale customer needs. The language also provides that CLECs will have use of the existing Qwest system without limitation until third-party testing of the new replacement system has been successfully completed.³⁰

In reviewing the proposed settlement, we have some concerns with respect to the methodology agreed upon among the settling parties as to the means to assure that the public and competitors would suffer "no harm" as a result of a post-merger transition from Qwest's OSS to CenturyLink's OSS in Qwest Legacy Territory.

With respect to the duration of Qwest OSS guaranteed availability, we find that the Joint CLEC proposal to extend the use of Qwest's OSS for three years rather

²⁷ Applicant's Opening Brief at 26.

²⁸ *Id.* at 27.

²⁹ Staff Opening Brief at 13-14.

³⁰ Joint CLEC Opening Brief at 23-25 and Attachment A, pp.6-7

than two is not supported by the record and would constitute a "net benefit" to CLECs rather than prevent a particular harm. We therefore reject the three-year extension proposed by Joint CLECs and conclude that the most practical path for assuring that the "no harm" standard is met, is for the Commission to have an opportunity to hear from all interested persons at the time when abandonment of the Qwest OSS and cut-over to the CenturyLink OSS is imminent. Accordingly, we require as a condition of our approval of the transaction, that CenturyLink provide the Commission with ninety (90) days notice of its intention to cease making the Qwest OSS system available to wholesale customers and that such cutover shall not occur until the Commission has conducted an expedited investigative review and concluded that the post-merger OSS and performance levels will not deteriorate.

Condition 28. In the Settlement Agreement, CenturyLink agrees that for certain periods, notwithstanding any termination rights it may have in a Qwest Legacy Territory ICA, Commercial Agreement or Wholesale Agreement, no such termination will occur for certain specified periods. Condition 28, paragraph b, provides that Commercial Agreements will be extended at least eighteen months after the closing date for specified offerings for agreements where Qwest and the CLEC or CMRS carriers were parties as of the closing date. Paragraph c. has a similar provision for the services particular to Wholesale Agreements. Paragraph d, generally provides that Qwest Intrastate tariffs, including Qwest term and volume discount plans, will not be changed for eighteen months. Applicants claim that these commitments are "more than reasonable" because they will be foregoing "substantial rights that would remain in place notwithstanding the merger," especially in light of the fact that they are not required under the Act or under Oregon law.³¹

Wireless Carriers argue that the 36-month extension for Qwest ICAs should apply to CenturyLink ICAs as well. To have different termination periods will require the negotiation and arbitration of CenturyLink's ICA's earlier, causing the expending of additional resources and time rather than focusing on providing competitive services. This denies interconnecting carriers the benefits of the efficiencies derived from the merger.³² Staff argues that Oregon statutes require the Commission to ensure that the merger does not cause harm; it does not require the Commission to ensure that the merger's benefits are shared with competitors or passed on to customers.³³ Wireless Carriers also argue that "[A] four-year extension is more appropriate as it will give interconnecting parties like Sprint additional time to work under the existing ICAs."³⁴ In response, Staff contends that "Sprint's observation that four years is longer than three years is not a compelling reason" for the longer term.³⁵

Joint CLECs argue that, as with the ICA provisions, Commercial and Wholesale Agreements should be extended in Qwest territories for thirty-six months.

³¹ Applicant Opening Brief at 28-29.

³² Wireless Opening Brief at 15-16.

³³ Staff Opening Brief at 15.

³⁴ Wireless Opening Brief at 16.

³⁵ Staff Opening Brief at 15.

The shorter time frames in the Settlement Agreement “are unreasonable and fail to adequately protect local competition from the risks associated with the Proposed Merger” and “are not sufficient for the majority of CLECs, which rely more than Integra on these wholesale offerings.”³⁶ Furthermore, Joint CLECs argue that assurances by Qwest that it has not already raised these rates is certainly no assurance that it will not undermine the spirit of the agreement by filing numerous increase notices just before closing.³⁷

The final section of Condition 28, identified as “d. Intrastate Tariffs,” contains a commitment that for at least 12 months after the Closing Date, the Merged Company will not seek to increase rates or modify terms and conditions for Qwest wholesale tariff offerings. The Settlement Agreement does not address intrastate access tariffs.

Wireless Carriers assert that the synergies and economies of scope and scale created by the merger give CenturyLink a key competitive advantage and that an examination of their finances will show that they do not require the current high switched access rates to cover the network costs of providing voice services and that consumers ultimately pay higher-than-necessary rates. Wireless Carriers propose a plan wherein first CenturyLink Legacy ILECs reduce their intrastate switched access rates to mirror Legacy Qwest intrastate rates in Oregon, followed by a reduction in all merged firm ILECs’ rates closer to the actual costs of providing switched access services. Ultimately, the Commission should require that all of the ILECs’ intrastate rates mirror Qwest’s interstate access rates.³⁸

On September 7, 2010, the ALJ denied a motion to add the issue of intrastate access rates to this proceeding and on November 3, 2010, declined to certify the question to the Commission. Applicants urged the Commission to again reject the proposal as being outside of the scope of the proceeding.³⁹ Staff also noted the ALJ rulings and the fact that “a carrier may raise the issue to the Commission at any time by petition, and that an independent investigation into rates is a better mechanism to review rates.”⁴⁰

Resolution

We have examined the record and the arguments on this Condition in light of the “no harm standard” and concur with Staff’s views in each of the areas of contention with respect to the extension period of wholesale and commercial agreements. The settlement conditions already confer a benefit on competitors. Extending intrastate tariff terms is also not appropriate because, if the transaction closes, these services will still be regulated under the Qwest Price Plan and switched access rates are capped until at least September 2013. We also agree that the Applicants’ witnesses rebutted the Joint CLECs’ concerns about Qwest gaming the timing of extensions by raising rates for the

³⁶ Joint CLECs Opening Brief at 15-16.

³⁷ Joint CLECs Reply Brief at 21.

³⁸ Wireless Opening Brief at 5-13.

³⁹ Applicant Opening Brief at 35-36.

⁴⁰ Staff Opening Brief at 20, citing Nov 3, 2010 ALJ Ruling.

purpose of locking competitors into higher rates over the extended period of the agreements.⁴¹ Furthermore, in the settlement agreement between the Applicants and Integra, the company agreed to freeze interstate tariff for a period of 12 months. As a company cannot discriminately offer tariff rates to any one customer, all carriers will be eligible to receive service at the frozen rates. Any further extension of those rates is a matter of federal jurisdiction.⁴² The proposed modifications to Condition 28 espoused by Joint CLECs and the Wireless Carriers are denied.

Condition 31. Joint CLECs propose to add a clause which states that, in addition to complying with 47 U.S.C. sections 251 and 252, in Legacy Qwest Territories, as already agreed to in the Settlement Agreement, the Merged Company (and its ILEC affiliates) will waive its right to seek the exemption for rural telephone companies under section 251(f)(1) of the Act, and its right to seek suspensions and modifications for rural carriers under section 241(f)(2). Joint CLECs note that two out of three CenturyLink Oregon ILEC affiliates currently operate under the rural exemption, and "there is a material risk that the Merged Company will seek to avoid its obligations as an ILEC under section 251(c) by using the rural exemption as a shield against network interconnection obligations which promote competition." Joint CLECs believe that the rural exemption increases competitors' operating costs because they cannot rely on section 251(c) to support their service arrangements.⁴³

Applicants respond that eligibility for the exemption is a matter of federal law and the qualified status of CenturyLink's ILECs is unaffected by the transaction. A section 251 proceeding under the Act provides comprehensive procedures for state commissions to follow in determining whether to lift the exemption and a summary requirement is not justified. Any concerns are adequately addressed in Condition 31 and Condition 6 of the Integra Settlement.⁴⁴

Resolution

The commitment of the Merged Company to comply with sections 251 and 252 of the Act is adequate to meet the "no harm" standard. The Merged Company specifically commits that it will not seek to avoid any subsection (f) obligations in Legacy Qwest Territory. The changes proposed by Joint CLECs would constitute a "net benefit" to competitors as a result of the merger and would be in excess of the standard of review required for our approval. We decline to include the Joint CLEC proposed additional language to Condition 31.

Condition 34. This Condition, supported by Staff and CUB as well as Applicants, requires the Merged Company to maintain wholesale service quality for services provided by Qwest as of the Closing Date of the transaction and further precludes CenturyLink from seeking to modify the Qwest Performance Indicator

⁴¹ *Id.* at 19.

⁴² *Id.*

⁴³ Joint CLEC Opening Brief at 44.

⁴⁴ Applicant Reply Brief at 20-21.

Definitions (PID) or Qwest Performance Assurance Plan (QPAP) for at least 18 months. It cannot seek to eliminate or withdraw the QPAP for an additional three years. The Condition contains specific requirements for addressing performance levels in Qwest Legacy Territory.⁴⁵

Joint CLECs propose to replace the language of this condition entirely with new provisions that may be briefly summarized as follows:

1. ICAs would receive the same treatment as commercial agreements and tariffs as of closing date.
2. Merged Company will have to continue to make the same performance metric reports available to CLECs after the merger date as before, and provide those reports to the Commission if requested.
3. The Commission and the FCC will have the authority to determine if additional remedies are required if the remedies in this condition do not result in the required wholesale service quality performance or if the CenturyLink violates the merger conditions.
4. No PID or QPAP will be reduced, eliminated or withdrawn for at least five years after closing and can be used by all CLECs until the Merged Company receives Commission approval after the five years has elapsed.
5. Eliminates subsection i. of section a. to calculate the rolling average performance comparison and subsection b. root cause analysis procedures and replaces them with maintaining standards of premerger performance and remedy payments using current QPAP and Z tests and values and requires in Qwest legacy territory for company to meet CLEC-specific required metric in the CLEC-specific special access performance reports that Qwest was required to provide as of the Merger filing date, with remedy payments as calculated by Commission or FCC on a per-month and per-metric basis to each affected CLEC.

Joint CLECs argue that there must be a disincentive for CenturyLink to achieve synergies by sacrificing service quality, which is why an augmented five-year plan, which addresses wholesale service quality pre- and post-merger, is necessary. The Applicants' opposition, flawed in several respects, is itself a sign that the plan is necessary.⁴⁶

Similarly, TRACER voices concerns regarding risks to service quality resulting from the transaction, due to incentives to cut costs by prematurely integrating protocols and IT systems among Qwest, CenturyLink, and Embarq. The Settlement Agreement and Integra Agreements do not go far enough in TRACER's view to protect

⁴⁵ Staff Opening Brief at 20-21.

⁴⁶ Joint CLEC Opening Brief at 49-51.

against wholesale service quality degradation and it therefore supports Joint CLECs proposals generally.⁴⁷

In reply, Applicants comment that the subject is far too complex to be addressed in a merger proceeding and notes that the original proponent of the Joint CLECs' proposal, an Integra witness, now approves of the language as part of its settlement with the Applicants.⁴⁸ Applicants also note that the Joint CLEC's proposed plan has not been through the same scrutiny as the QPAP, which was agreed to after extensive negotiations, testing and audits—a long and arduous, collaborative process under governing federal standards. Applicants also question whether the Commission has authority to impose additional financial penalties absent Applicants' acquiescence. Furthermore, the proposal is not tied to merger-related conduct and any changes in service quality performance levels cannot be attributed to the merger itself. Thus the plan can create large windfall penalties resulting in unearned income to CLECs, even if the same level of service quality was provided during the comparison periods.⁴⁹

Resolution

The Commission reviewed the QPAP as part of the section 271 proceeding in docket UM 823, receiving considerable testimony and ruling on the various mechanisms that would be utilized to ensure Qwest's maintenance of high wholesale service quality. However, we are not convinced that the provisions and remedies within Condition 34 adequately protect the wholesale customers of services provided in Legacy Qwest Territory from any alleged harm that might arise from the merger.

Although the Joint CLEC proposals are complex and far-reaching, they have not been sufficiently examined in the record to warrant their inclusion in the list of conditions whose adoption is required to assure that no harm will result from approval of the Merger Transaction. Therefore, to ensure that wholesale service quality is maintained in the post-merger future, within the next ninety days, the Commission will open an investigation into the most appropriate means and methods to retain wholesale service quality.

Condition 39. Under the terms of the Settlement Agreement, Qwest will not seek to reclassify any wire centers in its Legacy Territory as "non-impaired" or seek forbearance from any other sections 251 or 271 obligation or dominant carrier regulation until June 1, 2012.⁵⁰

⁴⁷ TRACER Opening Brief at 9-11.

⁴⁸ Applicants Reply Brief at 24.

⁴⁹ *Id.*, at 24-25.

⁵⁰ Under section 251 (d)(2)(B), certain unbundled network elements must be provided if "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the series that it seeks to offer." If the unbundled elements are alternatively available within a wire center area, pursuant to the procedures set forth in the FCC's *Triennial Review Order*, the ILEC may seek to have that wire center declared as "non-impaired" and the requirements to provide the subject elements at regulated rates may be removed.

Joint CLECs agree with the moratorium negotiated by Staff, but believe that the 2012 date is too short at barely 15 months, and far less than the time period the Merged Company “will be engaged in integration and pursuing merger-related synergy savings. This also falls far short of the 42-month moratorium adopted by the FCC in relation to the AT&T/BellSouth merger.”⁵¹ Joint CLECs claim that the proposed increased moratorium “would provide critical certainty for wholesale customers related to the bottleneck inputs they purchase from the Merged Company.”⁵²

Applicants note that the proposal is inconsistent with FCC decisions that set the standards for reclassifications and also does not follow the standards approved in Order No. 07-328 in docket UM 1251. Applicants also note with approval the Commission’s review of Qwest reclassification petitions since 2007 and assert that this process would be halted by Joint CLECs’ proposal despite the significant FCC and Oregon history of addressing these questions.⁵³ Staff also rejects the proposed condition, noting that it goes beyond what is necessary to ensure the Transaction causes “no harm” to the CLECs and would actually result in the Transaction providing a net benefit to them. The transaction does not itself present a harm that a request for reclassification or for forbearance will be improperly granted.⁵⁴

Resolution

The Joint CLEC proposal to extend the moratorium on wire center reclassification and forbearance petitions is rejected. The Commission has considerable experience in evaluating such petitions and assuring that the competition and the public interest will not be adversely affected by the ILECs’ proposals. Such reviews are unrelated to the Merger Transaction and are not properly reviewed in this proceeding. The condition providing for a brief moratorium is a component in the overall Settlement Agreement which, taken in sum and as modified by this order, will be sufficient to assure that the Merger Transaction does not harm the competitive environment in Oregon.

Staff, CUB, Joint CLECs, and Wireless Carriers’ “New” Proposed Conditions. In its Opening Brief, Joint CLECs affixed, as Attachment A, a copy of the Settlement Agreement with proposed changes and additions interlaced and identified in the text. Among the revisions were four new conditions inserted after Condition 41 and identified as 42, 43, 44, and 45. The conditions originally numbered Conditions 42-53, were renumbered 46-57. All of the conditions, 42-53, are uncontested and have been discussed above and included in our order. The MFS Condition proposed by Staff and CUB, but rejected by the Applicants, is numbered by Joint CLECs as Condition 45 which, for the sake of convenience, the Commission addresses at that point.

Joint CLECs’ Proposed “New” Condition 42. This proposed condition provides that the Merged Company will ensure that directory listings are incorporated

⁵¹ Joint CLEC Opening Brief at 48.

⁵² *Id.* at 49.

⁵³ Applicants Reply Brief at 22.

⁵⁴ Staff Opening Brief at 22.

into databases provided to CLECs and that CLECs' subscriber listings are accessible to any requesting person on the same terms and conditions as the Merged Company's listings are made available. Joint CLECs contend that the Settlement Agreement contains no commitment that the Merged Company will comply with existing law. It cites testimony indicating that CenturyLink shifts its directory obligations to a third party vendor by refusing to contract with competitors (in an ICA) for certain basic directory listing and directory assistance functions. As a result, Joint CLECs assert there is a greater likelihood that those services will be degraded if they do not maintain their databases in the same manner as Qwest. Adopting the condition will not impose any additional operational burdens, but will ensure that the Merged Company does not try to undermine competitors by acting inconsistently with federal law.⁵⁵

Staff asserts that this condition is not necessary because it is duplicative of Condition 31 of the Settlement Agreement which states that CenturyLink and all of its ILECs will comply with 47 U.S.C. sections 251 and 252.⁵⁶ Applicants also note that Settlement Agreement Condition 31 and Condition 6 in the Integra Settlement address this issue, but claims that Joint CLECs are seeking more, i.e. attempting to impose a disputed interpretation of section 251 and 252 on the Merged Company through this proceeding, which attempt should be rejected. Any such dispute should be addressed through a new complaint proceeding before the Commission.⁵⁷

Resolution

Compliance with federal law in the offering of directory listing and directory assistance services falls within Condition 31 of the Settlement Agreement and the additional language proposed by Joint CLECs is redundant on its face. To the extent that a CLEC believes it has a dispute with an ILEC with respect to the handling of directory listings or directory assistance, it may bring a complaint to the Commission, but the matter is unrelated to the instant proceeding and the satisfaction of the "no harm" standard in approving this Transaction. The proposed Condition 42 is rejected.

Joint CLECs' Proposed "New" Condition 43. Joint CLECs assert that the Settlement Agreement fails to address "CenturyLink's practice of requiring CLECs to bear the costs of establishing burdensome and inefficient multiple points of interconnection (POI) per LATA," a particular problem for CLECs who provide competitive residential wireline voice services in small Oregon communities. By establishing multiple, separate legal entities, Century is able to avoid its obligations to provide a single POI (SPOI) per LATA, even though the networks may be interconnected and contiguous and harms competition.⁵⁸ The new Condition 43 provides:

At CLEC's option, the Merged Company will interconnect with CLEC at a single point of interconnection per LATA, regardless of whether

⁵⁵ Joint CLECs Opening Brief at 37-39.

⁵⁶ Staff Opening Brief at 17.

⁵⁷ Applicants Reply Brief at 19-20.

⁵⁸ Joint CLECs Opening Brief at 29-30.

the Merged Company provides service in such LATA via multiple operating company affiliates or a single operating company, provided that such affiliates' networks are interconnected.⁵⁹

Staff contends that the proposed condition does not address a potential harm of the Merger Transaction and that it has not been shown that it is appropriate to require an SPOI per LATA as a condition of approval of the Transaction. It is a benefit rather than an obligation required by law.⁶⁰ Applicants also assert that the issue is not an appropriate topic for a merger review and that it appears to be specific to a single carrier. Any CLEC with such concerns should more appropriately raise the issue in negotiations or an arbitration proceeding.⁶¹

Resolution

The Commission believes that this is an issue that should be addressed in the context of negotiating and arbitrating ICAs rather than as part of a merger transaction review. To the extent that a CLEC seeks to amend an existing ICA as provided above and is rejected by the Applicants, an appropriate proceeding can be opened by the Commission. The Joint CLEC proposed new Condition 43 is rejected.

Joint CLECs' Proposed "New" Condition 44. The proposed condition provides that a CLEC may opt-in to any Qwest ICA in Legacy Qwest Territory in the entire Qwest region, subject only to local state-commission approved specific pricing, performance plans and technical feasibility. The burden of proving technical infeasibility will be on the Merged Company.⁶² In support of this condition, Joint CLECs contend that the increase in size of the Merged Company will allow it to obtain economies and efficiencies. These benefits should also accrue in part to "captive wholesale customers and consumers." As companies get larger, their ability to leverage such size and scope disadvantages competitors. Such actions could lead to degraded service to end-user customers in Oregon. Requiring wholesale customers to spend time and resources to negotiate and arbitrate numerous agreements increases their transaction costs. CLECs should be able to "port" their Qwest agreements from one state to another and to opt-in to any Qwest agreement in another state and "port" it to Oregon as long as state-specific terms are met. These terms will ensure that the Merged Company does not attempt to obtain synergy "savings" through imposition of new or increased rates or charges and that CLECs' costs are not arbitrarily raised or adversely affected.⁶³

In a related proposal, Wireless Carriers ask the Commission to modify the Settlement Agreement in several ways. First it argues that the thirty-six (36) month extension of ICAs should apply to CenturyLink as well as Qwest Legacy territories.

⁵⁹ *Id.*, at Attachment A pp. 13-14.

⁶⁰ Staff Opening Brief at 17.

⁶¹ Applicants Reply Brief at 16.

⁶² Joint CLEC Opening Brief, at Attachment A, p.14.

⁶³ *Id.* at 33-37.

Wireless Carriers also argue that the ICA should be extended for four years.⁶⁴ Wireless Carriers assert that Wholesale customers should be able to share in the benefits of Transaction by permitting the porting of contracts between ILECs, which will avoid the burdensome incremental costs of contract negotiations. Wireless cites other jurisdictions where such porting has been required.⁶⁵

Applicants contend that intervenors can cite no authority for the Commission jurisdiction over such matters. As a practical matter, not all terms are applicable in all jurisdictions and many questions would arise as to which conditions were state-specific and which were not. There is no authorization in section 251 to allow CLECs to cherry-pick the best ICA terms outside of the standard negotiating process, merely because there is a merger proceeding pending. Furthermore, Qwest Legacy systems have section 271 obligations which make no sense to port to CenturyLink territories.⁶⁶ Staff asserts that the porting conditions are not necessary to address questions of ICA stability and that Wireless Carriers' recommended porting condition is unrelated to a harm posed by the Merger Transaction.⁶⁷

Resolution

The Joint CLEC's and the Wireless Carriers' proposals essentially seek to share in the benefits that will accrue to the Applicants by the merger. Rather than demonstrate that their conditions will prevent the merger from causing harm to their operations or the public interest, they seek an opportunity to reduce operating and management costs. While this is understandable, it is nevertheless outside of the scope of this proceeding. The additions contained in Joint CLECs' proposed new Condition 44, and the Wireless Carriers' proposal are rejected.

Staff and CUB "Most Favored State" (MFS) Condition and Joint CLEC Proposed "New" Condition 45. Staff and CUB propose an MFS condition which provides essentially as follows:

CenturyLink agrees that the Conditions may be expanded or modified as a result of regulatory decisions in other states and the FCC including conditions imposed by settlements or other commitments. CenturyLink agrees that the Commission may adopt any commitments or conditions occurring after the final order in this docket that are related to the transaction if the commitment or condition does not result in the company being required to provide a "net benefit" and either:

- i. The harm had not previously been identified and affects Oregon ratepayers and is applicable to Oregon; or

⁶⁴ Wireless Opening Brief at 14-16.

⁶⁵ *Id.* at 17-19.

⁶⁶ Qwest Opening Brief at 39-40.

⁶⁷ Staff Opening Brief at 16.

- ii. The commitments or conditions in the other state or the FCC are more effective in preventing harm than the Oregon commitments

If conditions or commitments meeting those standards occur, CenturyLink will

- a) Adopt the new condition with 15 days after the Commission issues a final order adopting the commitment and notify all the parties in this docket.
- b) Notify the Commission that they have received the last final order from other states and the FCC adopting new conditions
- c) Within 15 day from the last filing, any party to this case may file comments and responses regarding modifications in other states.

Joint CLECs proposal states that all conditions may be expanded or modified as a result of regulatory decisions and settlements in other states and that CenturyLink agrees that the state commission of any one state may adopt the conditions of any other state and the FCC.

Applicants oppose the MFS Condition. First, they assert that it is not necessary to ensure that the Merger Transaction imposes “no harm” and cite the numerous conditions to which they were willing to agree and that, as the Settlement Agreement currently stands, it satisfies the “no harm” standard for approval.⁶⁸ Applicants also assert that varying conditions in states will result in different compromises and reflect different priorities; requiring this provision would “unravel trade-offs that the Merging Companies and Staff and CUB or other parties have made that result in satisfying the public interest by importing a condition from a different state or from the FCC. Indeed, MFS conditions effectively serve as disincentives to negotiating * * *.”⁶⁹

Notwithstanding Applicants’ characterization of its position, CUB replies that the Settlement Agreement met the “in the public interest, no harm” standard *only if* the two additional conditions it and Staff propose are adopted.⁷⁰ CUB argues that Applicants’ protestations regarding the chilling effect of MFS provisions are undercut by the fact that it had long been on notice that MFS-like provisions were being sought by intervenors and that similar provisions had been imposed on CenturyLink by the Louisiana PSC on September 17, 2010; Applicants had still moved forward with settlements and negotiations in Oregon and throughout the country. Similarly, it makes no sense for the Commission to ignore the expertise of the FCC simply because the FCC was not included in the MFS provisions in previous cases.⁷¹

⁶⁸ Applicants Opening Brief at 49-50.

⁶⁹ *Id.* at 50-51

⁷⁰ CUB Reply Brief at 1.

⁷¹ *Id.* at 6-7.

Staff notes that the proposed Condition is not one-sided because “whether another jurisdiction finds a particular harm is not present in that jurisdiction is not necessarily probative of whether that potential harm is present in Oregon.”⁷²

Resolution

The instant Transaction is one of extraordinary breadth and complexity and the implications of the merger on customers and competitors would be difficult to overstate. In such circumstances, it is important that the Commission have available to it the collective expertise and wisdom of numerous other agencies who must also examine the issues faced in Oregon. To the extent that harms unforeseen may arise, despite our best efforts at exploring the issues, it is necessary and in the public interest to prevent those harms from affecting the public once we become aware that they exist. For this most basic of reasons, we adopt a “Most Favored State” (MFS) condition. We note, however, that numerous approval orders by various states and the FCC have been issued only very recently. As a result, there has not been adequate time to review the relevant provisions contained in each order. We therefore revise the timing provisions in the condition to provide adequate time for review and we include those revisions in Condition 54 in Appendix A.

Staff and CUB Broadband Trouble Report Complaint Reporting Condition. The proposed condition requires that, for a five-year period, the Merged Company annually report the number of Digital Subscriber Line (DSL) subscriptions and number of complaints regarding DSL service that it has received in the previous year. Applicants object that the information is beyond the Commission’s jurisdiction, does not address an identified harm and is not competitively neutral. The Commission does not regulate broadband, and competitors do not have such burdens and the costs and time detract from investments. Furthermore, CenturyLink has made substantial commitments to invest in broadband in Oregon and the condition is therefore unnecessary to spur broadband expansion.⁷³

Staff asserts that CenturyLink has “repeatedly touted the improved provision of broadband service in support of the Application.” The Applicants have already stipulated to extensive reporting requirements regarding its broadband deployment, including the number of broadband-capable households. It is not sufficient to merely monitor provisioning; to the extent that CenturyLink represents that it is benefiting customers, the Commission should have the ability to monitor whether it is fulfilling that commitment.⁷⁴

CUB asserts that it is “within the Commission’s domain to ensure that unregulated services provided by the Merging Companies are maintained during and after the merger in a manner that is also in the public interest and causes no harm. A Commission requirement for the merged companies to issue reports on the quality of

⁷² Staff Opening Brief at 10.

⁷³ Applicants Opening Brief at 47-48

⁷⁴ Staff Opening Brief at 7-8.

broadband services is not an unduly burdensome request * * *. CUB believes that the reporting requirement will provide an incentive to provide higher quality service. CUB is also concerned that, in its haste to roll-out broadband services, the Company may suffer a drop-off in quality. Finally, CUB agrees with Staff that the report should be required for consistency with the Commission Order No. 10-067 in docket UM 1431.⁷⁵

Resolution

While we agree with the substance of the Staff and CUB proposed language, the Merged Company should be provided with the opportunity to demonstrate its commitment to the provision of high-quality broadband services to the public and to assert that the continued preparation and submission of reports is unnecessary. Therefore, the Commission will require that the Merged Company file the Broadband Trouble Report no later than eighteen months after the Transaction closes, at which time it may petition the Commission to terminate its obligation to submit further annual reports as specified in the proposed condition.

Wireless Carriers' Proposal Regarding Enforcement of Merger

Conditions. Wireless Carriers assert that the Merged Company, intentionally or otherwise, may not interpret a Condition in the same manner as a competitor and that it is important to avoid objections from ILECs with respect to the proper forum for resolving the dispute. Wireless Carriers urge the Commission to specify how merger conditions are to be enforced.⁷⁶

In reply, Applicants note that a merger condition agreed to before the Commission cannot accord jurisdiction over various matters to other bodies, such as the FCC. Furthermore, Applicants argue that allowing the parties to choose alternative forums for dispute resolution reduces its own authority over the parties and the Transaction.⁷⁷

Resolution

We concur in Applicants' assessment of the Wireless Carriers' proposal with respect to the enforcement of Merger Conditions. It is this Commission's intention to fully exercise its jurisdiction over the parties and this Transaction to the extent necessary to ensure that it results in no harm to customers or competitors and that the resulting entity provides services in the public interest.

⁷⁵ CUB Opening Brief at 8-9.

⁷⁶ Wireless Carriers Opening Brief at 20.

⁷⁷ Applicants Reply Brief at 33.

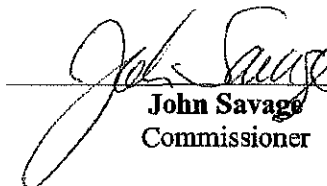
ORDER NO. 11-096


VII. ORDER

IT IS ORDERED that: under to ORS 759.375(1)(c) and ORS 759.380:

1. The Joint Application for Approval of Merger between CenturyTel, Inc., and Qwest Communications International, Inc., is approved, subject to the Conditions set forth in Appendix A to this Order.
2. No later than 30 (thirty) days after the completion of the Merger Transaction, CenturyLink, Inc., shall, by letter to the Director of the Utility Division of the Public Utility Commission of Oregon, certify that the Merger Transaction has been completed according to its terms and that the Merged Company and its regulated Oregon subsidiaries are in compliance with the conditions of this Order as of that date.

Made, entered, and effective MAR 24 2011.


John Savage
Commissioner


Susan K. Ackerman
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ORDER NO. 11 095

ENTERED MAR 24 2011

**UM 1484
CONDITIONS**

RETAIL CONDITIONS

1. CenturyLink Inc. (CenturyLink) shall provide the Public Utility Commission of Oregon (Commission) access to all books of account, as well as, all documents, data, and records that pertain to the transaction.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this transaction in any rate proceeding or earnings review under an alternative form of regulation.
3. The Applicants shall immediately notify the Commission of any substantive material changes to the transaction terms and conditions from those set forth in their Application that: (1) occur while a Commission order approving the transaction is pending, or (2) occur before the transaction is closed, but after the Commission issues its order approving the transaction. The Applicants must also submit a supplemental application for an amended Commission order in this docket if the substantive transaction conditions and terms affecting Commission regulated services change as set forth in this condition.
4. Except as authorized by this Commission, CenturyLink (referring to the parent company at the conclusion of this transaction) will maintain an organizational structure that includes the four separate ILECs in Oregon (no change from current allocated areas) – CenturyTel of Oregon Inc., CenturyTel of Eastern Oregon, Inc., United Telephone Company of the Northwest, and Qwest Corporation (Qwest) (collectively, Operating Companies). CenturyLink (also referred to as “Company”) agrees that an application must be filed with the Commission should it propose to merge or consolidate the operations of the Operating Companies, to the extent required by Oregon law.
5. Prior to the closing of the transaction, customer notification of the merger and change of parent company will be given to all local exchange and long distance customers and will comply with any state and FCC rules and regulations. This notice will include notification to all existing and acquired OTAP/Lifeline customers that the acquisition will not affect their OTAP/Lifeline credits and that there is no action required on their part. Prior to the notification, CenturyLink will submit a draft of the OTAP/Lifeline portion to the OTAP Manager for review.
6. No Commission-regulated intrastate service currently offered by Qwest in Exchange and Network Services Tariff No. 33 and Private Line Transport Services Tariff No. 31 will be discontinued for a period of at least three years following the Closing Date, except as approved by the Commission.
7. CenturyLink shall follow the terms and conditions of Qwest’s docket UM 1354 price plan (Order Nos. 08-408, 08-544, and 10-215). Exceptions to this Condition are

noted in Conditions 11, 16, and 18 below. Any proposed changes to the approved price plan must receive Commission approval. Within 60 days following any branding or administrative changes to Qwest's Oregon rates, rules, and regulations, CenturyLink will file updated Qwest Oregon rates, rules, and regulations that show the branding change.

8. The Operating Companies will not advocate in any general rate case proceeding for a higher overall cost of capital as compared to what its cost of capital would have been absent the transaction, but the Operating Companies may seek a cost of capital under the then-existing capital market conditions.
9. Operating Companies will not seek recovery of one-time transition, branding or transaction costs in Oregon intrastate regulated rate proceedings. Operating Companies will not seek to recover through wholesale service rates one-time transaction, branding or transition costs.
10. The Merged Company will not recover, or seek to recover through wholesale or retail service rates or other fees paid by wholesale or retail customers any increases in overall management costs that result from the transaction, including those incurred by the operating companies. For purposes of this condition, "transaction-related costs" shall be construed to include all Merged Company costs related to or resulting from the transaction and any related transition, conversion, or migration costs and, for example, shall not be limited in time to costs incurred only through the Closing Date.
11. As a requirement for post-merger financial reporting, each operating company will submit the Commission standard *Annual Report* Form O and Commission standard *Oregon Separated Results of Operations Report* Form I.
12. Within 60 days of the nearest calendar quarter following 12 months after close of the transaction, and for two subsequent 12-month periods, CenturyLink shall file with the Commission a report describing:
 - a) Substantive activities undertaken relating to integrating Qwest operations with CenturyLink, as well as achieving synergies made available as a result of this Transaction. CenturyLink synergies will be reported on a CenturyLink total company basis;
 - b) Costs and projected savings of each such respective activity on a CenturyLink total company and Oregon-allocated basis;
 - c) Organizational and staff force changes in Oregon operations; and,
 - d) Impacts on Oregon operations and customers.

The reporting requirement required by Condition 12 shall end with the submission of the third report unless otherwise directed by the Commission.

13. CenturyLink will commit to expend \$45 million in Broadband deployment in CenturyLink and Qwest areas in Oregon over a five (5) year period beginning January 1, 2011 and ending December 31, 2015. CenturyLink will commit to expend twenty-five percent (25%) of the \$45 million Broadband investment by December 31, 2012.

Beginning on the date of the first anniversary of the close of the Transaction and continuing annually until the \$45 million Broadband commitment is completed, CenturyLink will submit to the Commission Staff: 1) a Broadband deployment plan that details the planned investments for the year, including the geographic areas targeted for investment and the estimated number of customers that would benefit; and 2) a report that identifies the previous calendar year's progress in Broadband deployment including: a) a list of all wire centers and broadband speeds currently available in each wire center by speed and number of lines capable showing wire centers where broadband investment was made, b) the additional number of households capable of receiving broadband; and c) the prior year's and cumulative amounts expended towards the \$45 million Broadband commitment.

CenturyLink will provide a semi-annual update to the broadband deployment plan outlining progress made and identifying any impediments that may prevent the completion of the planned projects.

14. After the Closing Date, the Merged Company will honor any and all promotional discount offers made by pre-merger Qwest to its residence and small business customers, including those for local, long distance, and internet access services. The discounted prices will continue on an individual customer basis until the term to which Qwest committed expires.
15. Within 30 days after the close of the transaction, CenturyLink will notify Commission Staff:
 - a) Post-merger CenturyLink's consolidated 2010 Net Debt/ trailing 12-month EBITDA.
 - b) Post-merger rating agency reports of CenturyLink
 - c) Pre-merger stand-alone CenturyLink's price per share as of the Date of Closing of the Transaction.
 - d) Pre-merger stand-alone Qwest's price per share as of the Date of Closing of the Transaction.
16. CenturyLink will not encumber the assets of the Oregon Operating Companies that are necessary or useful in the performance of their duties to the public without seeking Commission approval pursuant to ORS 759.375.
17. CenturyLink agrees that it will not seek to recover in Oregon intrastate regulated retail or wholesale rates any acquisition premium paid by CenturyLink for Qwest. Any acquisition premium will be recorded in the books at the parent level.
18. After the close of the merger, both CenturyLink and Qwest agree to the removal of the Qwest price plan exemption from the requirements of ORS 759.380 and ORS 759.375. However, the parties agree that for property sales where the sales price is less than \$10 million the Qwest Price Plan exemption from ORS 759.375(1)(a) applies, except that the sale of any Qwest exchange will be subject to Commission approval under ORS 759.375.
19. After the closing of the transaction and for a period of not less than three years, CenturyLink must file with the Commission quarterly reports with:

- a) CenturyLink's consolidated Balance Sheet.
- b) Intercompany receivables and payables showing the beginning balance, the change for the quarterly and the ending balance of those accounts will be submitted to the Commission. This report shall be filed annually on April 1 of each year.
- c) Dividend payment declared by CenturyLink to its shareholders (in total and per share) for the same time period.

These quarterly reports should be filed no more than ninety (90) days following the close of each quarter. CenturyLink could waive this condition if its post transaction issuer credit rating is affirmed as investment grade by two of the following credit rating agencies (or successors): Moody's, Fitch Ratings, or Standard and Poor's Services.

- 20. Immediately after the close of this transaction, the Operating Companies will report retail service quality results in accordance with OAR 860-023-0055. CenturyTel is currently exempt from service quality reporting, having met the conditions of OAR 860-023-0055 (16)(d), but is required to submit to the Commission the monthly CenturyTel retail service quality reports for two years after the close of this transaction.
- 21. CenturyLink will maintain current Commission minimum retail service quality standards (OAR 860-023-0055) as are currently being reported in the Qwest's monthly service quality reports to the Commission. If CenturyLink fails to maintain the current service quality levels for the Qwest Operating Company it will be subject to potential penalties as set forth in ORS 759.450.
- 22. CenturyLink will provide to the Commission the following:
 - a) CenturyLink will provide to the Commission on the first anniversary of the Transaction Closing Date, a status report on its switching infrastructure in the state and any switch replacements, upgrades or retirements made in the prior calendar year as well as any that are known for the upcoming calendar year.
 - b) CenturyLink will provide the Commission on the first and second anniversary of the Transaction Closing Date, a confidential report for the previous calendar year detailing Oregon regulated capital expenditures as a percentage of total system expenditures and a comparison of the amount of regulated capital expenditures per Oregon access line with the amount of regulated capital expenditures per CenturyLink system-wide access line.
- 23. CenturyLink will provide to Commission Staff, in electronic form, and subject to confidentiality, the detailed Form-477 data that the four Operating Companies are currently providing to the FCC for their service areas. This will be done annually for three years beginning with the year after the closing of the transaction, subject to the continuation of the requirement for filing with the FCC.

24. CenturyLink is committed to complying with all applicable federal and Oregon safety standards and requirements, and will commit to comply with the safety and reliability laws in Oregon under ORS 757.035, OARs 860 Divisions-024, and -028.
25. Within seven (7) calendar days after close of the transaction, CenturyLink agrees to provide the Commission a listing of CenturyLink primary and secondary points of contact within its new organization for safety and pole attachment matters.
26. Condition Deleted.
27. Operations Support Systems

Retail

Prior to conversion of major Qwest/CenturyLink retail operations support systems that impact Oregon operations, CenturyLink will provide notice to the Commission ninety (90) days in advance of the conversion. Notification will consist of a description of the systems involved, the action to be taken, the timelines associated with the system conversion and a description of customer impacts. Retail operations support systems are defined as ordering, provisioning, maintenance and repair, and billing systems.

Wholesale

In Legacy Qwest ILEC Service Territory, after the Closing Date, the Merged Company will use and offer to wholesale customers the Legacy Qwest Operational Support Systems (OSS) for at least two years, or until July 1, 2013, whichever is later, and thereafter provide a level of wholesale service quality that is not less than that provided by Qwest prior to the Closing Date with functionally equivalent support, data, functionality, performance, electronic flow through, and electronic bonding. After the period noted above, the Merged Company will not replace or integrate Qwest systems without first establishing a detailed transition plan and complying with the following procedures:

- a. Detailed Plan

The Merged Company will provide notice to the Commission and any affected parties at least 270 days before replacing or integrating Qwest OSS system(s). Upon request, the Merged Company will describe the system to be replaced or integrated, the surviving system, and steps to be taken to ensure data integrity is maintained. The Merged Company's plan will also identify planned contingency actions in the event that the Merged Company encounters any significant problems with the planned transition. The plan submitted by the Merged Company will be prepared by information technology professionals with substantial experience and knowledge regarding legacy CenturyLink and Legacy Qwest systems processes and requirements. Carriers will have the opportunity to comment on the Merged Company's plan in a forum in which it is filed as well as in the Qwest Change Management Process.

- b. CMP

The Merged Company will follow the procedures in the Qwest Change Management Process ("CMP") Document.

c. Replacement or Retirement of a Qwest OSS Interface

- i. The Merged Company will provide the CLECs and CMRS carriers training and education on any wholesale OSS implemented by the Merged Company without charge to the CLEC and CMRS carrier.
- ii. CenturyLink shall provide the Commission with 90 days notice of its intention to cease making the Qwest OSS system available to wholesale customers. The cutover shall not occur until the Commission has conducted an expedited investigative review and concluded that the post-merger OSS and performance levels will not deteriorate.

Billing Systems

The Merged Company will not begin integration of billing systems before the end of the minimum two-year or July 1, 2013 period, whichever is longer, noted above, or without following the above procedures, unless the integration will not impact data, connectivity and system functions that support or affect CLEC and CMRS carriers and their customers. Any changes by the Merged Company to the Legacy Qwest non-retail OSS will meet all applicable ICA provisions related to billing and, to the extent not included in an ICA, will be Ordering and Billing Forum (OBF) compliant.

28. Notwithstanding any provision allowing one or both parties to Qwest interconnection agreements ("ICAs"), Commercial Agreements, and other Wholesale Agreements between Qwest Corporation or its successors and assigns and CLEC and CMRS carriers ("Extended Agreements") to terminate the Extended Agreement upon or after expiration of the term of the agreement, the Merged Company shall not terminate or grandparent, change the terms or conditions, or increase the rates of any Extended Agreements during the unexpired term or for at least the Applicable Time Period identified below, whichever occurs later (the "Extended Time Period"), unless required by a change of law, or a CLEC or CMRS carrier requests or agrees in writing to a change and any applicable procedure to effectuate that change is followed. In the event that the Extended Agreement expressly allows termination of the agreement in other circumstances, such as default due to non-payment, this Condition does not preclude termination of an Extended Agreement in those circumstances provided that the Merged Company follows both (1) the Extended Agreement's express provisions, and (2) any applicable procedures pertaining to such termination. Upon approval of the Transaction, these terms will be part of the order of approval and thus not trigger or require the filing of an ICA amendment, unless directed otherwise by the Commission.

- a. Interconnection Agreements. The Applicable Time Period for Qwest's interconnection agreements (ICAs) is at least thirty-six (36) months after the Closing Date. The Extended Time Period applies whether or not the initial or current term has expired or is in evergreen status.

- i. The Merged Company shall allow a CLEC or CMRS carrier to use its pre-existing ICA as the basis for negotiating an initial successor replacement interconnection agreement to the extended ICA. Where the parties agree it is reasonable to do so, the parties may incorporate the amendments to the existing agreement into the body of the agreement used as the basis for such negotiations of the initial successor replacement interconnection agreement.
 - ii. A CLEC or CMRS carrier may opt-in to an ICA in its initial term or the extended term.
 - iii. If Qwest and a CLEC or CMRS carrier are in negotiations for a replacement ICA before the Closing Date, the Merged Company will allow the CLEC or CMRS carrier to continue to use the negotiations draft upon which negotiations prior to the Closing Date have been conducted as the basis for negotiating a replacement interconnection agreement. In the latter situation (ongoing negotiations), after the Closing Date, the Merged Company will not substitute a negotiations template interconnection agreement proposal of any legacy CenturyLink Operating Company for the negotiations proposals made before the Closing Date by Legacy Qwest.
- b. Commercial Agreements. The Applicable Time Period for Commercial agreements is at least eighteen (18) months after the Closing Date for Qwest's Commercial agreements (*i.e.*, offerings made available after a UNE(s) becomes unavailable via ICA): Broadband for Resale, Commercial Broadband Services (QCBS), Commercial Dark Fiber, High Speed Commercial Internet Service (HSIS), Local Services Platform (QLSP), Internetwork Calling Name (ICNAM), and Commercial Line Sharing, as well as any other Commercial Agreement to which Qwest and CLEC or CMRS carrier were parties as of the Closing Date. Notwithstanding any provision to the contrary in this Condition:
- i. After the eighteen (18) month period, Qwest reserves the right to modify rates.
 - ii. If a Commercial Agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC or CMRS carrier on a grandparented basis to serve CLEC or CMRS carrier's embedded base of customers already being served via services purchased under that Commercial Agreement, subject to Qwest's right to modify rates, for at least eighteen months after Qwest has notified CLEC or CMRS carrier that the agreement is no longer available.
- c. Wholesale Agreements. The Applicable Time Period for Wholesale Agreements is at least eighteen (18) months after the Closing Date for Qwest's Wholesale Agreements (*i.e.*, offerings made available after a tariffed offering becomes unavailable via tariff): Wholesale Data Services Agreement (ATM, Frame Relay, GeoMax, HDTV-Net, Metro Optical Ethernet, Self-Healing Network, Synchronous Service Transport), as well as any other Wholesale agreement to

which Qwest and CLEC or CMRS carrier were parties as of the Closing Date. Notwithstanding any provisions to the contrary in this Condition:

- i. After the eighteen month period, Qwest reserves the right to modify rates.
 - ii. If a Wholesale Agreement later becomes unavailable on a going forward basis, the agreement will remain available to CLEC or CMRS carrier on a grandparented basis to serve CLEC or CMRS carrier's embedded base of customers already being served via services purchased under that Wholesale Agreement for at least eighteen months after Qwest has notified CLEC or CMRS carrier that the agreement is no longer available, subject to Qwest's right to modify rates.
- d. Intrastate Tariffs. For at least twelve months after the Closing Date, the Merged Company will not seek to increase rates or modify terms and conditions for Qwest wholesale tariff offerings. Notwithstanding any provision to the contrary in this Condition, Qwest may engage in Competitive Response pricing as set forth in its tariffs.
- i. Regarding term and volume discount plans, such plans offered by Qwest as of the Closing Date will be extended by twelve months beyond the expiration of the then existing term, unless the wholesale customer indicates it opts out of this one-year extension.
 - ii. The Merged Company will honor any existing contracts for services on an individualized term pricing plan arrangement for the duration of the contracted term.
29. The Merged Company agrees not to increase the rates in Qwest ICAs during the "Extended Time Period" defined in Condition number 28 above. If, during the Extended Time Period, the Merged Company offers a section 251 product or service that is not offered under an ICA (a "new" product or service), the Merged Company may establish a rate using normal procedures. A product, service, or functionality is not "new" for purposes of this paragraph if Qwest was already providing that product, service, or functionality at existing rates as of the Closing Date in the Legacy Qwest ILEC-serving Territory.
- a) Regarding rates changed *via* a Commission cost docket, the Merged Company may initiate a cost docket (or seek rate increases in a cost docket initiated by another party) before the expiration of the thirty-six (36) month Extended Time Period for ICA terms only if: (i) the rate elements, charges or functionalities are not already provided under rates as of the Closing Date as described in paragraph 4; or (ii) the cost docket is not initiated until at least eighteen months after the Closing Date and any rates approved in the cost docket will not become effective until after expiration of the thirty-six month Extended Time Period for extension of ICA terms.

- b) After the Closing Date, in the Legacy Qwest ILEC-serving Territory, the Merged Company shall not assess any fees, charges, surcharges or other assessments upon CLEC or CMRS carriers for activities that arise during the subscriber acquisition and migration process other than any fees, charges, surcharges or other assessments that were approved by the Commission and charged by Qwest in the Legacy Qwest ILEC Service Territory before the Closing Date, unless Qwest first receives Commission approval. This condition prohibits the Merged Company from charging such fees, charges, surcharges or other assessments, including:
- i. Service order charges assessed upon CLEC or CMRS carriers submitting local service requests ("LSRs") for number porting;
 - ii. Access or "use" fees or charges assessed upon CLEC or CMRS carriers that connect a competitor's own self-provisioned loop, or last mile facility, to the customer side of the Merged Company's network interface device ("NID") enclosure or box; and
 - iii. "Storage" or other related fees, rents or service order charges assessed upon a CLEC or CMRS carrier's subscriber directory listings information submitted to the Merged Company for publication in a directory listing or inclusion in a directory assistance database.
30. In the Legacy Qwest ILEC Service Territory, the Merged Company will continue to provide intrastate transit service subject to the same rates, terms, and conditions that were provided as of the Closing Date for at least three years following the Closing Date, unless directed otherwise by the Commission.
31. CenturyLink and all of its incumbent local exchange carrier ("ILEC") affiliates will comply with 47 U.S.C. sections 251 and 252. In the Legacy Qwest ILEC Service Territory, the Merged Company will not seek to avoid any of its obligations on the grounds that Qwest Corporation is exempt from any of the obligations pursuant to sections 251(f)(1) and 251(f)(2) of the A Act.
32. In the Legacy Qwest ILEC Service Territory, after the Closing Date, Qwest Corporation shall be classified as a Bell Operating Company ("BOC"), pursuant to section 3(4)(A)-(B) of the Act and shall be subject to all requirements applicable to BOCs, including sections 271 and 272.
33. In the Legacy Qwest ILEC Service Territory, to the extent that an ICA is silent as to an interval for the provision of a product, service or functionality or refers to Qwest's website or Service Interval Guide (SIG), the applicable interval, after the Closing Date, shall be no longer than the interval in Qwest's SIG as of the Closing Date. Either party to the ICA may request an amendment to the ICA to lengthen an interval after the thirty-six (36) month Extended Time Period for extension of ICA terms.
34. In the Legacy Qwest ILEC Service Territory, the Merged Company shall comply with all wholesale performance requirements and associated remedy or penalty regimes for all wholesale services including those set forth in regulations, tariffs, Commercial Agreements defined above, and Interconnection Agreements applicable

to Legacy Qwest as of the Closing Date. In the Legacy Qwest Service Territory, the Merged Company shall continue to provide to CLECs and CMRS carriers at least the reports of wholesale performance metrics that legacy Qwest made available, or was required to make available, to CLECs and CMRS carriers and the Commission as of the Closing Date, or as subsequently modified or eliminated as permitted under these conditions or pursuant to any changes in law. After the execution of this settlement and prior to the Closing Date, Qwest agrees not to initiate any changes to wholesale performance requirements and associated remedy or penalty regimes, however, nothing prevents Qwest from responding to and participating in any docket initiated by another party or as otherwise required by law.

- b) The Merged Company will not seek to reduce or modify the Qwest Performance Indicator Definition (PID) or Qwest Performance Assurance Plan (QPAP) that are offered, or provided via contract or Commission approved plan, as of the Closing Date for at least eighteen months after the Closing Date. After the eighteen-month period, the Merged Company may seek modifications under the terms and conditions outlined in the QPAP. The Merged Company will not seek to eliminate or withdraw the QPAP for at least three years after the Closing Date. The QPAP will be available to all requesting CLECs and CMRS carriers unless the Merged Company obtains approval from the Commission to eliminate or withdraw it.
 - i. For at least three years after the Closing Date, and consistent with the FCC's required conditions of the Embarq-CenturyTel Merger, in the Legacy Qwest ILEC Service Territory, the Merged Company shall meet or exceed the average wholesale performance provided by Qwest to CLEC or CMRS carrier, measured as follows:
 - a) For the first three months after Closing Date, Qwest's performance will be compared to Qwest's performance for the twelve months prior to Transaction Closing Date.
 - b) Thereafter, each successive month of Qwest's performance will be added to the three month period in Condition 34.a.i.a. in determining Qwest's performance until twelve months after Closing Date.
 - c) Beginning one year after Closing Date, Qwest's performance will be measured by a rolling twelve month average performance.
- c) If the Merged Company fails to provide wholesale performance levels as measured by the methodology described in this condition, the Merged Company must conduct a root cause analysis for the discrepancies and develop proposals to remedy each deficiency within thirty days and provide this to CLEC or CMRS carrier and Commission Staff for review and comment.
 - i. A CLEC or CMRS carrier may invoke the root cause procedure for deterioration in wholesale performance for any PID, product, or disaggregation included within a PID measure if the CLEC or CMRS carrier determines that the performance it received for that PID,

- product, or disaggregation is materially different and provides the basis for CLEC or CMRS carrier's determination.
- ii. If performance deficiencies are not resolved, the CLEC or CMRS carrier may request a resolution or wholesale service quality proceeding before the Commission. The Merged Company does not waive its right to oppose such a request.
- d) Within ninety (90) days after the close of the Transaction, the Commission will open an investigation into the most appropriate means and methods to retain wholesale service quality, including a review of the effectiveness and appropriateness of performance requirements, remedies and penalties.
35. For thirty-six (36) months after the Closing Date, in the Legacy Qwest ILEC service Territory, the Merged Company will provide to Commission Staff quarterly data for Oregon wholesale carriers in the aggregate that will enable monitoring of current performance compared to the performance for the 12 months prior to the Closing Date for the five metrics consistent with Condition 34 above, in the manner described. For twelve months after the Closing Date, in the Legacy Embarq ILEC Service Territory, the Merged Company will provide to the Commission Staff quarterly data for Oregon wholesale carriers in the aggregate that enable monitoring of current performance compared to the performance for the 12 months prior to the Closing Date for the five metrics. Additionally, the Merged Company will grant Commission Staff access to aggregate service quality data currently available to wholesale carriers on the companies' websites.
36. The Merged Company shall provide to wholesale carriers, and maintain and make available to wholesale carriers on a going-forward basis, up-to-date escalation information, contact lists, and account manager information and will provide this information, when possible, thirty (30) days prior to the Closing Date. If not possible, the Merged Company will provide the information within five business days, absent exigent circumstances. For changes to support center location, the Merged Company will provide at least thirty days advance written notice to Wholesale carriers and to Commission Staff. For other changes, the Merged Company will provide reasonable notice, as circumstances permit, of the changes and will keep pertinent information timely updated. The information and notice provided shall be consistent with the terms of applicable interconnection agreements.
37. The Merged Company will make available to each wholesale carrier in the Legacy Qwest ILEC Service Territory the types and level of data, information, and assistance that Qwest made available as of the Closing Date concerning Qwest's Wholesale Operational Support Systems functions and Wholesale business practices and procedures, including information provided via the wholesale website (which Qwest sometimes refers to as its Product Catalog or "PCAT"), notices, industry letters, the change management process, and databases/tools (loop qualification tools, loop make-up tool, raw loop data tool, ICONN database, *etc.*).
38. The Merged Company shall ensure that wholesale and CLEC operations are sufficiently staffed and supported, relative to wholesale order volumes, by personnel,

including IT personnel, adequately trained on the Qwest and CenturyLink systems and processes. With respect to the wholesale and CLEC operations, such personnel shall be dedicated exclusively to wholesale operations so as to provide a level of service that is not less than and is functionally equivalent to that which was provided by Qwest prior to the Transaction Closing Date and to ensure that customer protected information is not used by the Merged Company's retail operations for marketing purposes. The Merged Company will employ people who are dedicated to the task of meeting the needs of wholesale customers.

39. Qwest will not seek to reclassify as "non-impaired" any Qwest Oregon wire centers for purposes of section 251 of the Act, nor will the Merged Company file any new petition under section 10 of the Act seeking forbearance from any section 251 or section 271 obligations or dominant carrier regulation in any Qwest Oregon wire center before June 1, 2012.
40. In the Legacy Qwest ILEC Service Territory, if the Commission acknowledges or approves the Settlement Agreement filed by CenturyLink, Qwest and Integra in this docket, the line conditioning amendment including all rates, terms and conditions related to Condition 14 of that Settlement Agreement will be made available to any requesting carrier no later than 30 days after the Transaction Closing Date.
41. After the Closing Date, the Merged Company will engineer and maintain its network in compliance with federal and state law, as well as the terms of applicable ICAs.
 - a) The Merged Company shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to the local loop, as provided by 47 C.F.R., section 51.319(a)(8).
 - b) The Merged Company will retire copper in compliance with federal and Oregon law, as well as the terms of applicable ICAs and as required by a change of law.
42. If the Merged Company changes the carriers it uses to provide intrastate long distance service to customers in either the pre-merger CenturyLink or the pre-merger Qwest areas, the Merged Company will notify each of the affected Oregon intrastate long distance customers at least 30 days in advance of the change. For ninety (90) days following the customer transfers, CenturyLink will waive any change charges, e.g., PICs, for customers choosing to change carriers.
43. CenturyLink will designate a representative to serve on the Commission's Oregon Telecommunications Industry Advisory Committee, which generally convenes on a quarterly basis, should the incumbents representing Qwest and CenturyLink, respectively, vacate their seats as a result of the Merger.
44. Prior to any billing system consolidations or changes, CenturyLink will provide to the OTAP Manager and Administrative Specialist a description of how the OTAP credits are listed on customer bills. CenturyLink will also provide the OTAP Manager and Administrative Specialist a sample copy of a customer's bill that lists the OTAP/Lifeline credits. The OTAP Manager and Administrative Specialist will

accept a redacted copy in which the customer's personal identifying information (PII) is protected.

45. CenturyLink will maintain sufficient staff levels to effectively address daily communications with Commission Staff regarding OTAP/Lifeline questions and concerns and OTAP/Lifeline reporting issues. Prior to any billing system consolidations or changes, CenturyLink will provide notice to the OTAP Manager of staffing changes that impact the established process for filing reports and addressing OTAP Staff questions and concerns.
46. If Legacy Embarq or CenturyTel personnel identify an approved OTAP/Lifeline customer for the other's territory on a Commission approval report due to Staff error, legacy personnel must either:
 - a) Notify the OTAP Manager and Administrative Specialist of the discrepancy on the No Match report, or
 - b) Contact personnel (and the OTAP Manager and Administrative Specialist) of the customer's respective territory to apply the OTAP/Lifeline credit to their account.
47. Before the close of transaction, CenturyLink will designate at least one liaison for higher level discussions with the OTAP Manager should the incumbents representing Qwest and CenturyLink, respectively vacate their positions as a result of the merger.
48. Post- merger, CenturyLink will advise the OTAP Manager of any impending OTAP/Lifeline marketing and outreach efforts (e.g. radio public service announcements). In addition, CenturyLink will provide the OTAP Manager electronic copies of its OTAP/Lifeline advertising collateral.
49. Prior to the Merger, CenturyLink, including Embarq and Qwest, will have no outstanding debt to the Commission with respect to the RSPF surcharge collection, remittance, and reporting requirements.
50. CenturyLink will provide notice to and input from the OTAP Manager prior to making material changes to the existing Qwest mechanized OTAP reporting system.
51. CenturyLink agrees that the Operating Companies, including Qwest, will comply with all applicable Commission statutes and regulations regarding affiliated interest transactions, including timely filings of applications and reports, consistent with their respective forms of regulation, and terms of such regulation, as applicable to each respective Operating Company. To the extent affiliated interest changes do occur, the Company or its Operating Companies will make the appropriate affiliated interest filings pursuant to ORS 759.390 consistent with their respective forms of regulation.
52. Within 12 months after the close of this transaction, CenturyLink will file with the Commission affiliated interest agreements, including an updated Cost Allocation Manual for services that reflect as charges and credits to operating accounts in Operating Companies' Form O.
53. The certificates of all CenturyLink and Qwest entities certified as Competitive Providers in Oregon will remain in effect and unchanged as of the date of close of the

transaction. Thereafter, CenturyLink and Qwest will report any changes affecting those certificates in compliance with applicable Commission statutes and regulations.

54. The Conditions set forth in this order 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. The Commission may adopt any commitments or conditions from other states and the FCC 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 has 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 its Staff.

Should commitments or conditions meeting the requirements of subsections i. or ii. of this paragraph occur, the Commission shall conduct an expedited proceeding as follows:

- a) Within thirty (30) days following the close of the transaction, CenturyLink will provide the Commission Staff and all intervening parties in docket UM 1484 with copies of all final orders of other state Commissions and the FCC
- b) Within thirty (30) days after the service of such filings upon Staff and intervening parties, any party to this proceeding may file with the Commission its response, including its position as to whether any of the 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 requirements set forth above, and should be adopted in Oregon. Any party filing such a response should serve it upon the docket UM 1484 parties.

55. CenturyLink shall comply with the following reporting requirements:

- a) Within eighteen months of the close of the transaction, and for four subsequent annual periods thereafter, CenturyLink shall provide to the Commission the reports specified in subparagraphs b., c. and d., below.
- b) By month, the numbers of initial and verified trouble report complaint (TRC) data.
- c) The types and duration of TRCs.
- d) A brief caption as to the cause of each TRC. (TRCs may be grouped into categories for administrative reporting simplicity).

The filing must thoroughly document what information CenturyLink collects in the form of customer complaints about DSL service on the number, types, and causes of trouble that impinge on CenturyLink's provision of DSL service in Oregon.

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- a) Within eighteen (18) months of the close of the transaction, and for four subsequent annual periods thereafter, CenturyLink shall provide a report to the Commission containing the following data: by customer class, wire center, by month, the number of DSL subscriptions.
- b) By customer class, wire center, by month, the number of requested DSL subscriptions.

Eighteen months after the close of the Transaction or any time thereafter, CenturyLink may petition the Commission to remove the reporting requirements set forth above

**CERTIFICATE OF SERVICE
UM 1484**

I certify that on the 9th day of May, 2011 I served a Petition for Judicial Review on behalf of the City of Lincoln City, Lincoln County, Tillamook County and Parker Telecommunications Inc in docket UM 1484 on the following parties, by U.S. mail, postage prepaid:

Oregon Public Utility Commission
PO Box 2148
Salem OR 97308

Public Utility Commission
Mary Williams, Solicitor General
1162 Court ST NE
Salem OR 97301

Other Parties:

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Broomfield CO 80021-8015

Citizens' Utility Board of Oregon
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Joint CLECS
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TW Telecom of Oregon, LLC
Advanced TelCom, Inc.
Electric Lightwave, LLC
Eschelon Telecom of Oregon, Inc.
Oregon Telecom Inc.
United Telecommunications Inc. dba Unicom
Covad Communications Company
PriorityOne Telecom, Inc.
Charter Fiberlink OR-CCVII, LLC
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Certificate of Service

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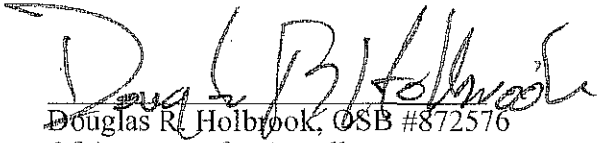
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DATED this 9th day of May, 2011.

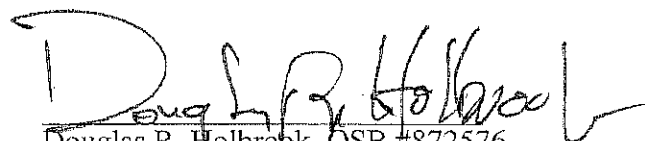

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CERTIFICATE OF FILING
UM 1484

I certify that on the 9th day of May, 2011 I filed the original Petition for Judicial Review on behalf of the City of Lincoln City, Lincoln County, Tillamook County and Parker Telecommunications Inc in docket UM 1484 with the Appellate Court Administrator by USPS first class mail addressed to:

Appellate Court Administrator
Appellate Court Records Section
1163 State Street
Salem OR 97301-2563

DATED this 9th day of May, 2011.


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