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.

SPRINT

DIRECT TESTIMONY

OF

CHRIS FRENTRUP

NON-CONFIDENTIAL VERSION

August 24, 2010

I. INTRODUCTION AND QUALIFICATIONS

Q. Please state your name and business address.

A. My name is Chris Frentrup. My business address is 900 7th Street NW, Suite 700, Washington, DC 20001.

Q. What is your position and who are you representing in this proceeding?

A. I am employed as a Director and Senior Economist for Sprint Nextel Corporation. I am testifying on behalf of Sprint Communications Company, L.P., Sprint Spectrum, L.P., and Nextel West Corp. (collectively, "Sprint"). Sprint is a provider of wireline long distance service, wireless communications services and wholesale services to cable providers in Oregon.

Q. Please summarize your educational background and business experience.

A. I received a Bachelor of Arts degree from the University of Texas in 1976 and a Doctor of Philosophy in Economics from Texas A&M University in 1984. I became Director – Senior Economist at Sprint Nextel in February of 2006. In that position, I am responsible for developing state and federal regulatory policy for Sprint Nextel, preparing testimony and contributing to pleadings that advocate that policy at both the federal and state levels.

Prior to joining Sprint Nextel I worked for two years at MiCRA, Inc. where I primarily worked on telecommunications items, including estimating the costs of providing unbundled network elements and the costs of international cables. Before MiCRA, I worked for nearly ten years at MCI as a senior economist developing MCI public policy for several proceedings before the Federal Communications Commission (FCC), including price cap regulation, universal service reform, access reform, Bell Company entry into long distance, and pricing of unbundled network elements. Prior to that, I worked at the FCC for nearly seven years as an Industry Economist, reviewing access tariffs under the rate of return rules and serving on the task force that developed the FCC's price cap rules for AT&T and the local exchange companies. Prior to joining the FCC, I worked for two years at AT&T forecasting revenue and demand.

Q. Have you previously testified before this and other state Commissions?

A. While I have not previously testified before this Commission, I have testified before the Wisconsin and Kansas Commissions and have supported the development of testimony in many other states. I have also prepared and assisted in the preparation of numerous pleadings at the Federal Communications Commission.

II. SUMMARY OF TESTIMONY

Q. Please summarize your testimony.

A. The proposed merger of CenturyLink and Qwest (Petitioners") is a significant transaction that would nearly double the size of Qwest nationally, one of the Regional Bell Operating Companies ("RBOC") created by the AT&T Divestiture. Within Oregon, the combination of Qwest and CenturyLink (which I refer to in my testimony as the "Merged Firm") would increase the holding company's ILEC access line market share to 72%. The Merged Firm will also increase its market concentration in the long distance, enterprise and broadband markets. In short, the Merged Firm will have significantly increased market power nationally, as well as in Oregon. The proposed merger therefore has the potential to cause substantial harm to the competitive balance within the telecommunications marketplace. This means the Oregon Public Utility Commission ("Commission") should reject the merger absent appropriate conditions that not only mitigate potential harms to the public interest created by the merger, but also ensure that the benefits from the purported synergies created by combining the CenturyLink and Qwest companies are realized by Oregon consumers and competitive carriers.

The Commission's review of proposed mergers requires it to find that "no harm" will be caused by the proposed merger.[1] In my Testimony, I propose several conditions to mitigate the potential competitive harm posed by the proposed merger's concentration of market power in the Merged Firm. These include: (1) correcting the Merged Firm's discriminatory intrastate switched access rate structure, (2) requiring it to adopt cost-saving practices with respect to existing interconnection agreements, and (3) mandating its compliance with recognized best carrier-to-carrier business practices to avoid impairing competition.

Q. Do you sponsor any exhibits with your testimony?

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[1] *In the Matter of Embarq Corporation and CenturyTel, Inc. Joint Application for Approval of Merger between the Two Companies and their Subsidiaries*, Docket No. UM 1416, Order No. 09-169 (2009); see also *In the Matter of Verizon Communications Inc. and Frontier Communications Corporation Joint Application for an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest Inc.*, Docket No. UM 1431, Order No 10-067 (2009); *In the Matter of Malheur Home Telephone Company Application for an Order Approving Transaction, and Request for Expedited Consideration*, Docket No. UM 1451, Order No. 09-483 (2009).

A. Yes. I sponsor Sprint Direct Exhibit JCF-1, attached to my testimony, which displays the current prices of switched access for each of the Merged Firm ILECs and the expected savings that will be realized by the Merged Firm's long distance affiliates after merger. I also sponsor Sprint Direct Exhibit JCF-2, attached to my testimony, which quantifies the effect of Sprint's recommended condition with respect to the Merged Firm's discriminatory access rate structure.

III. THE CONCENTRATED MARKET POWER OF THE MERGED FIRM WILL ADVERSELY IMPACT COMPETITION IN OREGON

Q. Have Petitioners provided information about the increase in the magnitude of its operation if the merger is permitted?

A. Yes. CenturyLink states that after the merger it will serve a nationwide total of 17 million access lines, more than 5 million broadband customers,[2] over 1.4 million video subscribers and 850,000 wireless customers.[3] The Merged Firm will have access lines in 37 states and will be approximately 60% the size of Verizon. Thus, the proposed merger will result in a company that is nearly double the size of Qwest nationally. This significantly larger company will have a greatly enhanced ability to wield market power to the harm of both consumers and competitors, and the harm will be even greater in the markets for several telecommunications and broadband services.

Q. How does the merger concentrate the merged company's market-share in Oregon?

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[2] Jones Direct p. 11 line 9-10
[3] http://news.qwest.com/centurylinkqwestmerger (last viewed August 10, 2010).

A. The Merged Firm will increase its market-share of Oregon ILEC lines to 72%. Using Qwest's current 802,000 lines as a base, the merger will result in an increase of 14% to approximately 911,000 lines.[4]

Q. Will the Merged Firm have a facility-based long distance service provider?

A. Yes. It will have its own facility-based long distance service provider, Qwest Communications Company, LLC ("Qwest LD").

Q. What is the financial benefit for the Merged Firm of a facility-based long distance provider?

A. The Merged Firm will enjoy an unwarranted advantage on terminating switched access and special access circuits over a broader swath of customers.[5]

Q. Please explain this financial benefit.

A. Qwest LD services can be provisioned to customers within the legacy CenturyLink service territories without incurring the inflated switched and special access charges CenturyLink imposed on Qwest when it was a competitor of CenturyLink. Thus, Qwest LD's offerings in the enterprise and mass markets will avoid these onerous input costs, unlike other service providers competing in the enterprise and mass markets who will continue to be burdened by the inflated access charges of legacy CenturyLink ILECs.

[4] Peppler Direct Testimony p.10 line 12-15
[5] In the merger of Verizon and MCI, the MCI Board cited these "access economics" as one reason for its acceptance of the revised proposal from Verizon. MCI Press Release, *MCI Accepts Revised Proposal From Verizon*, March 29, 2005.

Q. Please explain this reduction in input costs for Qwest LD.

A. Switched and special access service costs are a significant portion of the costs of providing mass market and enterprise services. While the Merged Firm may claim that its long distance companies will continue to pay access charges to the Merged Firm ILECs, accounting rules will require the Merged Firm to eliminate an equal amount of access service costs and access service revenue on the corporation books to reflect intra-company access service transactions. As a result, the only real financial impact of the access services provided within the corporation will be the actual economic cost of those services. The Merged Firm can therefore price its long distance service to cover only its true economic cost rather than that cost plus the inflated access service charges that all other long distance carriers must pay, and that Qwest's long distance arm had to pay before the merger. With the vast difference between the true cost of access services (both special and switched access), and the inflated cost resulting from CenturyLink's excessive access charges, the Merged Firm will possess a substantial input cost advantage over all other non-affiliated providers trying to serve the market.

The other carriers attempting to compete in the markets with Qwest LD will continue to face those excessive switched and special access charges, and will not be able to compete as vigorously on price as they would if the Merged Firm's access charges were set at economic cost. That is because Qwest LD will either price its retail long distance services below the level a competing long distance carrier can, in which case Qwest can eliminate competition. Or Qwest LD will price its retail long distance service at a level that reflects the inflated access charges CenturyLink imposes on all the long distance competitors so Oregon consumers will not get the lower price they could if competitors were provided non-discriminatory access service at cost-based rates. Either way, competition - and consumers - are harmed. Without correcting the discriminatory access rates that would result from the proposed merger, the merger will adversely affect competition in the enterprise and mass market long distance services markets to the harm of Oregon consumers.

Q. Will this reduction in input costs for Qwest LD also adversely affect long distance service competition within legacy Qwest ILEC service areas?

A. Absolutely. Legacy Qwest ILEC switched and special access rates are also greatly inflated. The vertical integration of an ILEC and long distance service provider gives a competitive advantage to the combined service provider.

Q. Will Qwest LD alone benefit from the discriminatory access rate structure that results from the proposed merger?

A. No. In addition to Qwest LD, the merger will vertically integrate non-facility based interexchange carriers (IXCs) CenturyTel Long Distance, LLC (CenturyTel LD) and Embarq Communications, Inc. (Embarq LD) with the Merged Firm. All of the Merged Firm's IXCs will thus enjoy discriminatorily favorable costs for interstate and intrastate switched and special access within their legacy local service territories, i.e., CenturyTel LD and Embarq LD in CenturyLink local service territory and Qwest LD within Qwest local service territory.

Q. Did Petitioners disclose the interstate switched access or special access charges that will be avoided as a result of this merger?

A. No. As I discuss below, Petitioners disclosed some intrastate switched access costs that it will avoid, but to date have refused to disclose the interstate switched and special access charges the Merged Firm will avoid as a result of this merger.

Q. How significant is the intrastate switched access cost-per-minute advantage the IXCs in the Merged Firm will have over all other long distance service providers?

A. Confidential Exhibit JCF-1, shows the change in cost the Merged Firm will experience by internalizing the intrastate switched access costs. In the two legacy CenturyTel service areas, Qwest LD will no longer experience the **BEGIN CONFIDENTIAL DATA END CONFIDENTIAL DATA** per minute call termination rate. Instead it will incur the incremental cost which several parties have demonstrated is likely far less than the current ISP reciprocal compensation rate level of $.0007.[6] Using this rate from the FCC's ISP Remand Order, Qwest LD will avoid at least **BEGIN CONFIDENTIAL DATA END CONFIDENTIAL DATA** of the CenturyTel tariffed intrastate switched access rate, and **BEGIN CONFIDENTIAL DATA END CONFIDENTIAL DATA** of the legacy Embarq tariffed rate. Finally, CenturyTel LD and Embarq LD will avoid **BEGIN**

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[6] *See* High-Cost Universal Service Support; Universal Service Contribution Methodology; Developing a Unified Intercarrier Compensation Regime; et al,, CC 01-92, WC 04-36, CC 96-45, CC 96-98, CC 99-68, WC 03-109, WC 05-337, WC 06-122, CC 99-200, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, FCC 08-262, released November 5, 2008, available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-262A1.pdf.

CONFIDENTIAL DATA **END CONFIDENTIAL DATA** of Qwest's inflated intrastate switched access tariff charges. Meanwhile, the competitors of the Merged Firm will not be able to avoid the expenses caused by its intrastate switched access rates.

Q. Have Qwest and CenturyLink quantified all of the intrastate switched access charges between the Merged Firm's providers that will be internalized as a result of this merger?

A. No. Although the Merged Firm's companies disclosed all access charges that are invoiced directly to another company within the Merged Firm,[7] the data was incomplete. CenturyLink provided only the access charges it pays directly, failing to include amounts it also pays to its wholesale provider of transport for its long distance traffic, which is Sprint. Accordingly the amount of access charges that will no longer be an external expense to the Merged Firm is understated. Sprint is in the process of gathering the access expense information CenturyLink did not provide and intends to supplement its testimony. In any event, it is clear that competitors would continue to be encumbered by Qwest's and CenturyLink's excessive access rates, while **BEGIN CONFIDENTIAL DATA** **END CONFIDENTIAL DATA** of this cost disappears for the Merged Firm's affiliated long distance service providers post merger, thus giving them a significant cost advantage in the competitive market.

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[7] CenturyLink disclosed that the CenturyLink ILECs billed Qwest **[BEGIN CONFIDENTIAL DATA]** **[END CONFIDENTIAL DATA]** and Qwest billed Embarq **[BEGIN CONFIDENTIAL DATA]** **[END CONFIDENTIAL DATA]** – Response to DR #12

Q. Will the access service cost differential between the Merged Firm's affiliated IXC and competitive IXCs increase the magnitude of the traffic between the Merged Firm's ILECs and IXCs?

A. Yes. Driven by the access service cost advantage and the ability to bundle multiple services together, the Merged Firm will undoubtedly experience an increased amount of traffic between the ILECs and their affiliated IXCs going forward.

Q. What would be the effects of that on competition?

A. The Merged Firm will be in a position to create a product no other provider can match, namely a service that permits the Merged Firm's customers to call any other Merged Firm customer for free or a greatly reduced rate.

Q. Please explain why the Merged Firm would be able to do that while competitors would not.

A. The Merged Firm will be able to handle increased traffic volume on a geographically larger network at a much lower incremental cost than its competitors because it will wholly avoid the upward pricing pressures caused by the inflated access rates it imposes on all other carriers using its expanded network. For example, Sprint's own Any Mobile Any Time product offering, which permits the subscriber to talk to any other wireless provider's customer without the meter running, is possible only because Sprint is not required to pay its wireless competitors bloated access service rates. In fact, wireless carriers are precluded by law from requiring IXCs or any other carriers to pay access rates for call termination. So if the Merged Firm is allowed to significantly reduce its own access charge costs on its network while at the same time maintaining artificially high access charges for all competitors using its network, it will enjoy a cost advantage that will allow it to provide service offerings at prices its competitors cannot offer and still remain in business.

IV. THE CONCENTRATED MARKET POWER OF THE MERGED FIRM WILL ADVERSELY IMPACT COMPETITIVE CHOICES FOR OREGONIANS

Q. Do Petitioners believe that competition for telecommunication services is impacting their business?

A. Yes. CenturyLink witness Jones explains "Competition for voice, Internet, data and video is widespread with increasing competition from wireless companies, cable operators, VoIP providers and new, start-up entities."[8] Thus, "[t]he pressure on all of these companies to be responsive, invest and innovate is intense."[9]

Q. Do Petitioners believe that the merger will improve their ability to compete?

A. Yes. Mr. Jones states that the Merged Firm "will be better situated, both financially and operationally, with more flexibility to meet the challenges of a rapidly changing and intensely competitive communications environment."[10]

Q. Do the Petitioners acknowledge the value of competitive choice to customers?

A. Yes. Mr. Jones states "[h]ealthy competition is in large part driven by the existence of a variety of viable network platforms in a given market. Competition is most robust

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[8] Jones Direct p. 9 line 20 through page 10 line 2
[9] Jones Direct p. 10 lines 4-5
[10] Jones Direct p. 12 line 19 through p. 13 line 2

in markets where there is intermodal competition: that is, where services are being delivered over wireless, wireline and cable platforms."[11]

Q. Will the merger truly enhance competition if it generates a lop-sided competitive advantage for the Merged Firm over competing carriers?

A. No. If the Merged Firm is permitted to burden competing carriers so as to delay their introduction of new services or their entry into new markets, or is permitted to continue to impose inflated switched access rates - or simply artificially increase the costs competitors incur to interconnect to the Merged Firm's expanded network - telecommunications service choices and prices for Oregon customers will be adversely impacted.

Q. Does the merged firm have more potential to engage in anticompetitive behavior within its expanded footprint?

A. Yes. The synergies and economies of scale and scope created by this merger increase the Merged Firm's ability as the sole manager of the dominant ILECs in a much, much larger service territory to engage in anticompetitive behavior more than legacy Qwest or legacy CenturyLink could do absent the merger. Further, the increased number of competitors the Merged Firm will face within its much larger service area increases its incentive for such behavior.

Q. Are merger conditions necessary to maintain the current competitive balance and improve the competitive landscape going forward?

[11] Jones Direct p. 18 line 16-20

A. Yes. Conditions are necessary. CenturyLink has testified to the value of intermodal competition to customers, and that the merger will improve the Merged Firm's competitive position in this regard. The conditions Sprint recommends are meant to ensure that customer choice among intermodal providers is not reduced or otherwise negatively impacted by the merger, but instead maintained so that it can be improved over time.

V. THE MERGER'S SYNERGY SAVINGS SHOULD BENEFIT ALL CUSTOMERS INCLUDING WHOLESALE CUSTOMERS

Q. What synergies have Petitioners identified for the Merged Firm?

A. Petitioners announced they anticipate the Merged Firm will save $575 million annually in operating expenses in 3-5 years after the merger closes, and an additional $50 million annually in capital expenditure savings as a result of this transaction.[12]

Q. Have Petitioners produced a state-by-state merger synergy savings breakdown?

A. No. CenturyLink states that "estimated synergies savings is not available by state.".[13]

Q. What portion of the merger synergies from the merger transaction should accrue to the operations in Oregon?

A. It is reasonable to allocate the savings to a specific state based on the relative size of the Merged Firm's anticipated operations in the state post-merger. Using the ratio of

[12] Bailey Direct at 14
[13] CenturyLink's response to Joint CLECs Fifth Set of Information Requests #56(j)

Oregon access lines to total lines for the merging companies approximately 5.36%[14] of the total synergies, which is $30.8 million of the $575 million in operating synergies and $2.7 million of the $50 million in capital synergies, should accrue to Oregon operations. The magnitude of these savings suggests Oregon wholesale customers should receive some benefits from the merger transaction.

Q. Do you have reason to believe the Merged Firm will achieve those levels of synergy savings?

A. Yes. CenturyLink provides guidance to its shareholders quarterly on the synergy results achieved in its last merger transaction, the purchase of the Embarq local telephone companies. The following is what was provided in its quarterly results press release for the second quarter of 2010:

> "CenturyLink achieved approximately $75 million in operating cost synergies during second quarter 2010 and expects to achieve approximately $330 million in annual run rate synergies by year end 2010."[15]

CenturyLink will have achieved $30 million more than the originally forecasted $300 million in merger synergies within 18 months of the close of the Embarq merger on July 1, 2009. CenturyLink originally estimated the synergies could be achieved within the first 3 years after the merger.[16]

[14] Peppler Direct p. 10 line 10-16; 911,000/17,000,000 = 5.36%
[15] CenturyLink Reports Second Quarter 2010 Earnings (rel. Aug, 4, 2010).
[16] *See* http://www.centurytelembarqmerger.com/pdf/pressreleases/CenturyTel_EMBARQ_Announcement_Release.pdf

Q. Are you aware that others have expressed concern about the financial strength of the Merged Firm and question its ability to generate the synergy savings Petitioners have claimed?

A. Yes. I am aware that some intervenors in Oregon and other states are concerned that the claimed synergies may not be realized; they focus on how the merger may not be successful, and how competitors and customers should be protected from the fallout of that occurring. I assume, however, that the Merged Firm will make its projected synergy savings because investors will require it and historic results support it. Moreover, Petitioners rely on these savings to support their claim that the proposed merger is in the public interest, and they should therefore be held to those projections in considering what conditions are warranted to accept their public interest claims. The question therefore is what are the means Petitioners have identified for achieving the projected synergy savings, and do competition and consumers benefit or not from those means? Put differently, does the Merged Entity achieve such large savings by raising costs to competitors like Sprint by reducing wholesale staff, maintaining the existing bloated intrastate switched access rate structure, and cutting corners on OSS integration, all of which makes customer choice more expensive? Or does the Merged Firm achieve savings by integrating best competition practices throughout its greatly enlarged service area so that wholesale and retail customers can benefit from the increased scale, scope and efficiencies of the merged companies? Synergy savings realized in Oregon should not come at the expense of competitor viability and customer choice; merger benefits must be clearly shown to accrue not only to the

Merged Firm's investors, but also to the various classes of customers in Oregon, as well as the State's other telecommunications carriers.

Q. Do Petitioners indicate any portion of the synergy savings will be passed through to either retail or wholesale customers in the form of lower prices for service?

A. No. CenturyLink's testimony states prices will remain the same through the completion of the merger. Its testimony is then silent as to any future price changes other than to say such changes will occur in accordance with applicable rules and laws.[17]

Q. Does the Petitioner's testimony detail how wholesale customers will benefit?

A. No. Qwest witness Peppler does state generally that "customers will benefit from the efficiencies and synergies realized by the combined company,"[18] and then notes in passing that as a result of the merger it will purportedly have additional resources to deploy fiber to cell sites.[19] But Qwest's ability to generate more revenues in the wireless backhaul market it already dominates within its ILEC service territory does not guarantee any benefits to wireless carriers or their customers. If the services provided to wireless carriers are priced like current special access services, far above the actual cost of the services, unaffiliated wireless service providers and consumers receive no benefit from the Merged Firm's investment in fiber to the cell sites.[20] And

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[17] Application of CenturyLink p. 17

[18] Peppler Direct at 21

[19] *Id.* at 23

[20] CenturyLink's second quarter 2010 revenue increases were primarily driven by growth in high-speed Internet customers and data transport demand from wireless providers. *See* http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-newsArticle_Print&ID=1456278&highlight=.

non-wireless wholesale providers receive no benefit whatsoever from fiber-to-cell site deployment.

Q. Does the Merged Firm plan to share any cost savings from the merger with its wholesale customers?

A. No. For instance, access service is a monopoly service and without regulatory intervention the Merged Firm has no incentive to reduce switched access service rates. In fact, CenturyLink has stated that it has no plans to change intrastate switched access rates for any of its Oregon ILECs upon merger close.[21] Despite the benefits that CenturyLink's regulated entities will realize from post-merger synergies in the form of lower costs, wholesale customers will not benefit from any of the savings realized, just as CenturyLink's wholesale customers in Oregon did not benefit from the massive synergy savings CenturyLink generated from the Embarq merger.[22] Clearly, this customer segment should receive at least its fair share of the synergy savings.

Q. Is there any other financial information that the Commission should consider in determining if the Merged Firm should be required to share merger synergies with its wholesale customers?

A. Yes. CenturyLink is currently a profitable company, and explains in its testimony that it plans to be even more profitable after merging with Qwest. CenturyLink has indicated the dividend payout per share of the Merged Firm will remain at the same

[21] CenturyLink response to DR Sprint #40

[22] CenturyLink has not lowered is intrastate switched access rate in Oregon as a result of the merger between Embarq and CenturyTel. – CenturyLink response to DR Sprint #21

high level.[23] To illustrate the profitability of CenturyLink, the current distribution of profit to its shareholders via dividends is $10.79 for each access line per month.[24] Customers – including carrier customers – should also receive benefits from the synergy savings, rather than all of that being used to enrich the equity holders of the Merged Firm. I discuss below the benefits that the Commission should require the Merged Firm to share with its carrier customers as a condition for approval of the merger of CenturyLink and Qwest in Oregon.

VI. THE MERGER SHOULD BE CONDITIONED UPON THE MERGED FIRM REDUCING INTRASTATE SWITCHED ACCESS RATES

Q. Why must CenturyLink's intrastate switched access rate be reduced as a result of this merger?

A. As I discussed above in Section III of my testimony, the vertical integration of CenturyTel LD, Embarq LD and Qwest LD providers with the CenturyLink and Qwest ILECs results in a competitive advantage for these long distance service providers who no longer have to pay the inflated switched access rates the ILECs continue to charge all unaffiliated long distance service providers. To avoid negative impacts to the competitive market in Oregon, the access rates of each of the pre-merger ILECs must be reduced.

[23] CenturyLink pre-merger dividend is $2.90 per share and that policy will continue post-merger. *See* http://news.qwest.com/centurylinkqwestmerger (last viewed August 23, 2010).

[24] CenturyLink second quarter 2010 dividends paid June 21, 2010 were $219 million. *See* http://ir.centurylink.com/phoenix.zhtml?c=112635&p=irol-newsArticle_Print&ID=1456278&highlight=. $219 million divided by 6,767,000 access lines = $32.36 per quarter, divided by 3 = $10.79 per line per month.

Q. Has Qwest argued in the context of a merger proceeding that intrastate switched access rates should be reduced?

A. Yes. In the Iowa Telecom/Windstream merger proceeding before the Iowa Utilities Board, Qwest accurately explained how the expanded scope of an ILEC's business post-merger providing economies of scale that no longer justify inflated switched access rates:[25]

> Q. IS THERE ANY JUSTIFICATION FOR IOWA TELECOM HAVING ACCESS RATES NEARLY THREE TIMES HIGHER THAN THE RATE CHARGED BY QC?
>
> A. No. While, in the past, Iowa Telecom may have attempted to justify high switched access rates based on cost differences, with the proposed merger, arguments that the combined company does not have the size and scope of a company like Qwest no longer apply. As Sprint noted in its February 1, 2010 Statement In Lieu of Testimony, if the reorganization is approved the resulting combined company will have 3.3 million access line, roughly 13 times Iowa Telecom's present number of access lines. In light of the size of the new company, higher access costs cannot be justified by arguments that Iowa Telecom lacks the economies of scale available to large companies like Qwest.
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> Q. CAN THIS SIGNIFICANT DISPARITY BETWEEN SWITCHED ACCESS RATES CAUSE MARKET DISTORTIONS?
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> A. Yes. Unreasonably high access rates can lead to a distortion in local exchange rates. Companies who charge very high switched access rates (a monopoly service) can use these revenues to subsidize the cost of the local loop and can undercut the local rate of their competitors, or generate additional margin on their services. Unreasonably high access rates can also lead to arbitrage schemes. As the term is used here, "arbitrage" in the communications industry means routing traffic in such a manner to take advantage of discrepancies in rates. Wide disparities in rates between companies can provide opportunities for arbitrage and leads to abuses such as "Traffic Pumping," wherein IXC traffic is deliberately routed to rural carriers with high access charges by third parties.

Q. Has Qwest attempted to stop discriminatory switched access deals?

[25] Direct Testimony of Lisa Hensley Eckert in Iowa Utilities Board Docket No. SPU-2009-0010.

A. Yes. Qwest has pointed out the competitive advantage a carrier obtains if it has a contract with another provider to get access services are costs less than the tariff rate. Qwest has advocated that all providers should be able to get the same rates for access services to avoid competitive harm. For example, Qwest provided the following testimony before the Arizona Corporation Commission: [26]

> Q. STAFF RECOMMENDS IN THE TESTIMONY OF WILFRED SHAND THAT AGREEMENTS BETWEEN ILECS AND IXC FOR SWITCHED ACCESS SERVICES, THOUGH THEY ARE NON-251 INTERCONNECTION AGREEMENTS, SHOULD BE FILED. DOES QWEST AGREE?
>
> A. Qwest agrees that agreements between LECs and IXCs for services which are otherwise tariffed and involve intrastate switched access services should be made available to all IXCs on a non-discriminatory basis. Whether such agreements are filed with the Commission or otherwise made public is not a critical distinction. The important requirement is that such agreements must be promptly disclosed to the public and made available to all IXCs.

Q. Does the merger of Qwest and CenturyLink result in the same discriminatory advantage for its IXC affiliates over other providers that Qwest identified in its testimony to the Arizona Commission?

A. Yes. The Merged Firm's affiliates that pay access charges no longer need to worry about the tariffed access rates of the LECs in the Merged Firm. These affiliates have, in essence, just signed an agreement to get access services at cost-based rates instead of the bloated rates in the Merged Firm's tariffs. The Merged Firm's IXCs have received exclusive sweetheart access deals that Qwest has testified in other proceedings must be provided to <u>all</u> competitive carriers.

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[26] Reply Testimony of Lisa Hensley Eckert in Docket No. RT-00000H-97-0137 and Docket No. T-00000D-00-0672 filed February 5, 2010 before the Arizona Corporation Commission

Q. What is Sprint's recommendation for the Merged Firm's intrastate switched access rates?

A. The merger condition Sprint requests with respect to access rates is:

1) No later than 30 days after the closing date of the Merger, all legacy Century Link ILECs in Oregon (CenturyTel, Embarq ILECs) must reduce their intrastate switched access rates to mirror the intrastate access rates and rate structure of the Qwest ILEC in Oregon; and

2) No later than 120 days after the closing date of the Merger, all Century Link ILECs in Oregon (CenturyTel, Embarq and Qwest ILECs) must reduce their intrastate switched access rates to mirror the interstate switched access rates and rate structure of Qwest.

Q. Have you quantified the change in access revenues for the CenturyLink ILECs if this condition is adopted?

A. Yes. Sprint estimates the reduction in the Merged Firm's intrastate switched access revenues will approximate **BEGIN CONFIDENTIAL DATA END CONFIDENTIAL DATA** in the first step of the merger conditions and approximately **BEGIN CONFIDENTIAL DATA END CONFIDENTIAL DATA** in the second step. The calculation is shown in Confidential Exhibit JCF-2 attached to my testimony.

Q. How does that amount compare to Oregon's share of the estimated synergy savings of the Qwest merger?

A. The access revenue reduction of **BEGIN CONFIDENTIAL DATA END CONFIDENTIAL DATA** is far less than the estimated $30.8 million Oregon-specific operating expense synergies of the Qwest and CenturyLink merger.

Q. Using the formula you have proposed for estimating Oregon's share of the synergy savings projected for this merger, how much of the synergy savings from CenturyLink's merger with Embarq should have been shared with customers in Oregon?

A. Approximately $6.2 million of that merger's $375 million in operating cost synergies, based on the relative access line share of CenturyLink's Oregon operations.[27]

Q. How does Sprint's recommended access rate reduction compare to Oregon's share of the estimated synergy savings from both the Qwest and Embarq mergers with CenturyLink?

A. The access reduction of **BEGIN CONFIDENTIAL DATA END CONFIDENTIAL DATA**[28] of the total synergy savings generated by CenturyLink's last two mergers.

[27] Embarq Oregon and CenturyTel of Oregon working loops (reported in the USAC 3d Qtr. 2008 HC05) divided by total access lines reported in the CenturyTel and Embarq 3d Qtr. 2008 report to shareholders: ((65,211 + 64,657) = 129,868 / ((2,041,000 + 5,853,000) = 7,894,000) = 1.65%

[28] **BEGIN CONFIDENTIAL DATA END CONFIDENTIAL DATA.**

Q. If the Commission requires access rate reductions as a condition of merger approval, will retail customers realize any benefit?

A. Yes. The benefits derived from intrastate switched access rate reductions will accrue directly to retail customers in the form of lower prices for retail services. Customers will also benefit if the Merged Firm's competitors have more resources for innovation, to invest in their networks, or to develop better service offerings for the customers. Finally, customers will see the benefit from lower access rates because the Merged Firm's inflated access rates will no longer slant the playing field in its favor. The competitive balance in the market will be more even for all providers. Consumers always receive better products and services when the market is more competitive.

VII. THE MERGER SHOULD BE CONDITIONED UPON THE MERGED FIRM REDUCING INTERCONNECTION TRANSACTION COSTS

Q. What specific transaction costs are you asking the Commission to limit?

A. I am referring to the administrative and operational costs carriers incur to negotiate/arbitrate and implement interconnection agreements under sections 251 and 252 of the Telecom Act.

Q. What is the benefit of reducing these transaction costs in conjunction with this merger?

A. By reducing the transaction costs, the merger benefits the entire telecommunications market, providing a broader benefit to the public as a whole. Specifically, competition is enhanced by limiting these costs to the benefit of end users in Oregon.

Q. How many interconnection agreements would the Merged Firm have post-merger?

A. In Oregon, CenturyLink has 37 interconnection agreements with CLECs and 19 with wireless companies.[29] Qwest reported 127 interconnection agreements with CLEC and 19 with wireless companies in Oregon.[30] In total the Merged Firm will have 202 interconnection contracts with competitors in Oregon alone. CenturyLink reports it has more than a thousand agreements with CLECs nationally, and that does not include wireless interconnection agreements that surely number in the hundreds. Clearly, the magnitude of interconnection agreements must generate significant costs for the industry as a whole, and accordingly higher prices for the customers of all these service providers.

Q. Should interconnected carriers receive some benefits of the merger?

A. Yes. The merger synergy savings should occur in all parts of the combined company, so all services provided by the Merged Firm, including interconnection, should receive some of those benefits.

[29] CenturyLink response to DR Sprint #22
[30] Qwest response to DR Sprint #22

Q. Is it clear exactly what those benefits might be or when the benefits would be realized?

A. No, CenturyLink provides no details on this topic. I suspect the interconnected carriers would realize the same portion of the merger savings from this merger as they received from the CenturyTel and Embarq merger, i.e., nothing, unless the Commission imposes conditions on the merger.

Q. Is the Merged Firm likely to make interconnection easier or harder in the face of competitive pressures?

A. The larger scale and concentrated resources of the Merged Firm naturally enable it to obstruct competition more. And along with this increased power comes the increased inclination to exercise that power when faced with a competitor that is likely to have success in challenging the Merged Firm's retail or wholesale services.

Q. What actions can the Commission take to limit local interconnection contract transaction costs and enable the continuing development of competition?

A. Transaction costs between the Merged Firm and all other interconnecting carriers could be greatly reduced if the Commission would impose merger conditions that 1) require the Merged Firm to extend the life of existing contracts; 2) allow requesting parties to port interconnection agreements to other Merged Firm affiliates and across state lines; and/or 3) require the adoption of standard agreements across the entire footprint of the merging ILECs. I discuss each of these conditions below.

1. Extending Existing Contracts

Q. Why is it beneficial to the industry to extend the life of existing local interconnection contracts?

A. Competing carriers can avoid the burdensome cost of contract negotiations and potential arbitration if existing contracts are extended. As long as the current interconnection terms are satisfactory to the requesting carrier, the ability to extend its existing interconnection agreement for a substantial period of time provides the carrier with a real benefit from the merger. Instead of extended and costly negotiations with the CenturyLink and Qwest ILECs over interconnection terms and conditions, carriers can focus resources on providing the best service offerings for retail consumers.

Q. What is Sprint's specific recommendation for the extension of existing contracts?

A. Sprint recommends an existing interconnection agreement, whether in its initial term or otherwise currently effective, may be extended by a requesting carrier for 48 months from the date the merger closes or for three years after an extension request is granted, whichever is longer.

2. Porting Existing Contracts

Q. Why is it beneficial to the industry to port interconnection agreements to other affiliated ILECs of the Merged Firm?

A. Like contract extensions, the ability to port a contract from one ILEC to another in the Merged Firm avoids the burdensome incremental cost of contract negotiations and potential arbitration to establish a new contract. With more than 100 ILECs in the Merged Firm[31] and its stated plan to retain each legal entity, management of the interconnection arrangements can be unnecessarily burdensome. A carrier wishing to interconnect with the Merged Firm in multiple locations would need to negotiate with the Merged Firm on a myriad of issues over and over again. It makes much more sense for the industry as a whole to permit the porting of existing agreements from one ILEC to another within the Merged Firm, even if the agreement originated in another state. The porting of existing agreements may also result in one nationwide interconnection agreement.

Q. Have Petitioners stated their opposition to porting an existing Qwest agreement into CenturyLink service territories within the same state or across states?

A. Yes. In discussing interconnection agreements, Petitioners state that "there is no legal basis to require CenturyLink to assume RBOC obligations within its legacy operating territory."[32]

Q. Did CenturyLink disclose any technical reasons that would preclude agreement porting?

[31] Nationally, CenturyLink will have approximately 75 legacy CenturyTel ILEC legal entities, approximately 25 legacy Embarq ILEC legal entities and 13 legacy Qwest ILEC legal entities.
[32] Qwest Supplemental Response to Sprint DR 33

A. No they did not.[33]

Q. What is Sprint's specific recommendation for porting existing agreements between ILECs of the Merged Firm?

A. The Merged Firm shall permit a carrier customer to port the entirety of an existing interconnection agreement (except for state-specific rates) entered into with any CenturyLink or Qwest ILEC in Oregon, whether negotiated or arbitrated, to any other CenturyLink or Qwest ILEC within Oregon, It shall also permit a carrier customer to port the entirety of an existing interconnection agreement from another state in the Merged Firm's territory where it is currently effective (except for state-specific rates), whether negotiated or arbitrated, to Oregon. The Merged Firm shall apply the ported agreement (whether an in-state agreement or an agreement from another state) to all carrier customer affiliates, aggregating all carrier customer affiliate arrangements under the one ported agreement. For purposes of this condition, state-specific rates do not include billing arrangements such as bill-and-keep for the exchange of traffic, or contractual provisions to share the costs of interconnection facilities. This condition shall continue for 48 months after the closing date of the merger, and shall apply to any existing agreement, whether in its initial term or otherwise currently effective, and to any new agreements created during the 48 month period following the closing date of the merger. Any agreement ported more than 12 months after the merger shall be effective for 36 months after the porting request is granted. If an agreement is ported from another Merged Firm entity within a state or across state

[33] CenturyLink and Qwest responses to DR Sprint #32, #33, #34

lines, any interconnection agreement that would otherwise apply is cancelled without penalty.

3. One National Standard Interconnection Agreement

Q. Why would it be beneficial to require the adoption of one standard agreement across the entire footprint of the merging ILECs?

A. As previously noted, the Merged Firm plans to continue to operate each of the existing ILEC legal entities post-merger, which would require carriers wishing to interconnect with more than one ILEC service territory to negotiate and potentially arbitrate a local interconnection agreement with each and every ILEC in the Merged Firm. Clearly this inflates the costs of entering the market, or of remaining in the market if entry has already occurred. Competitive offerings in the new market could be delayed or, at a minimum, the interconnecting company will incur more administrative/operational costs that must be recovered in some manner, such as through higher retail service rates. This condition is really just a matter of adopting a "best practice," which in this case is already used by Qwest. Qwest's SGAT, which is largely consistent except for local pricing, is an example of the movement toward a unified template across all of a company's service territories. The Merged Firm should be expected to do the same.

Q. What is Sprint's specific recommendation for one national standard interconnection agreement?

A. The Merged Firm shall recognize that porting existing agreements across state lines and applying them to affiliated carrier customers may result in a nationwide interconnection agreement. Any negotiations necessary to facilitate such porting to accommodate application of such agreements in multiple states or among requesting carrier customers shall occur in a timely fashion and the results shall apply retroactively to the date that such porting was requested by a carrier customer. Negotiations concerning new or amended interconnection agreements shall be accomplished on a nationwide basis and include all ILECs of the Merged Firm in one contract.

VIII. THE MERGER SHOULD BE CONDITIONED UPON THE MERGED FIRM COMPLYING WITH BEST BUSINESS PRACTICES

Q. Sprint is aware of several business practices that are handled very differently by Qwest and CenturyLink pre-merger. What is the first practice that concerns Sprint?

A. Currently legacy CenturyLink has a limit of 10 circuit migrations a day for carrier customers, while Qwest has set its limit at 50. Sprint has found CenturyLink's limit to be restrictive, harming Sprint's ability to compete and offer services in an efficient manner. The Merged Firm should be required to adopt the best practices available to it rather than be allowed to harm competition by maintaining inferior practices. Each of the ILECs within the Merged Firm should be required to allow at least 50 circuit migrations a day to facilitate competition. When CenturyLink is currently paying investors nearly $11 in dividends per access line, there is no excuse for only having the capability of 10 migrations per day. The Merged Firm should be expected to invest some of its synergy savings in better meeting its obligations to facilitate fair competition.

Q. What is another practice that causes Sprint concern?

A. CenturyLink recently filed a request with the FCC to delay its implementation of the one-day local number portability standard.[34] Ironically, the reason CenturyLink gave was that it has not finished integrating the two OSS from its <u>last</u> merger, with Embarq. CenturyLink wants to finish adopting the Embarq porting system across its entire footprint rather than update two separate systems to one-day porting, and claims that it cannot satisfy both the timeline for merger conditions put in place by the FCC and the one-day porting requirement deadline. On the other hand, Qwest confirms that they are already compliant with one day porting as of August 2, 2010.[35] Failure to implement one day porting delays customers who wish to switch carriers, causing some customers not to switch at all. The Merged Firm cannot be permitted to choose practices that inhibit competitive choice. As a condition of approval of the merger in Oregon, the Commission should require that the Merged Firm not degrade existing Qwest capabilities in Oregon, specifically ordering CenturyLink to implement one-day porting without any further delay, and in any event no later than February 2, 2011.

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[34] *See* Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability, WC Docket No. 07-244, *Century Link Petition for Waiver of Deadline* (filed June 7, 2010)
[35] Qwest Response to Sprint DR #39.

IX. THE COMMISION SHOULD SPECIFY HOW MERGER CONDITIONS ARE ENFORCED

Q. How should merger commitments be enforced?

A. Based on its experience in attempting to implement intended competition-enhancing conditions imposed on other ILEC mergers, Sprint is concerned that the Merged Firm, whether intentionally or unintentionally, may not interpret a merger condition in the same manner that the beneficiaries of the merger condition do. Sprint also has encountered objections from ILECs as to what the appropriate forum is for bringing a regulatory or legal action to enforce merger conditions. To erase doubt about merger condition enforcement, and to encourage the Merged Firm to implement in good faith all of the merger conditions approved by the Commission, Sprint proposes that the Commission specify how merger conditions are to be enforced.

Q. What is Sprint's specific recommendation for how merger conditions should be enforced?

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

Q. Does this conclude your Direct Testimony?

A. Sprint reserves the right to file supplemental testimony based on the Commission's resolution of Sprint's motion to compel discovery responses filed on August 16, 2010, which seeks additional information from the Merged Firm.

Confidential Exhibit JCF-1 to the Direct Testimony of Chris Frentrup in UM 1484

Cost per Minute of Intrastate Access Termination

In Legacy CenturyTel Territory - Eastern Oregon

	Pre-Merger	Post-Merger	Cost Change	% Avoided
Sprint Nextel	$ 0.0727	$ 0.0727	NONE	NONE
Qwest	$ 0.0727	$ 0.0007	$ 0.0720	99%

In Legacy CenturyTel Territory - Oregon

	Pre-Merger	Post-Merger	Cost Change	% Avoided
Sprint Nextel	$ 0.0712	$ 0.0712	NONE	NONE
Qwest	$ 0.0712	$ 0.0007	$ 0.0705	99%

In Legacy Embarq Territory - Oregon

	Pre-Merger	Post-Merger	Cost Change	% Avoided
Sprint Nextel	$ 0.0305	$ 0.0305	NONE	NONE
Qwest	$ 0.0305	$ 0.0007	$ 0.0298	98%

In Qwest Service Territory - Oregon

	Pre-Merger	Post-Merger	Cost Change	% Avoided
Sprint Nextel	$ 0.0110	$ 0.0110	NONE	NONE
CenturyLink LD	$ 0.0110	$ 0.0007	$ 0.0103	94%

Note: FCC has demonstrated the incremental cost of handling one additional minute is less than $.0007 and approaching zero

DOCKET UM 1484
SPRINT/3
FRENTRUP EX. 2

Confidential Exhibit JCF-2 to the Direct Testimony of Chris Frentrup in UM 1484

Estimated Access Revenue Reduction with Sprint Two Step Merger Conditions

	(A) 2009 Intrastate Access Revenues	(B) 2009 Intrastate Access Minutes	(C) 2009 Average Intrastate Rate	(D) Interstate Rate Cap	(E) Estimated Rate Change Step 1	(F) = (B) * (E) Estimated Revenue Change Step 1	(G) = (C) - (D) - (E) Estimated Rate Change Step 2	(H = (G) * (B) Estimated Revenue Change Step 2	(I) = (F) + (H) Estimated Revenue Change Both Steps
CenturyTel of Eastern Oregon, Inc									
CenturyTel of Oregon, Inc									
Embarq/United Telephone of the NW - Oregon									
Qwest - Oregon									
Total of Merged Firm									
Source:	CenturyLink Response to Sprint #3, For Qwest - CALC	CenturyLink Response to Sprint # 3 Qwest Response to Sprint # 3	For CenturyLink - CALC Qwest Response to Sprint # 3	FCC § 61.3 (qq)	CenturyTel rate minus Qwest rate United Telephone rate minus Qwest rate	CALC	CALC	CALC	CALC