

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the matter of,

Joint Application of Qwest Communications
International Inc. and CenturyTel, Inc. for
Approval of Indirect Transfer of Control of
Qwest Corporation, Qwest Communications
Company, LLC, and Qwest LD Corp.

Docket No. UT-100820

SUPPLEMENTAL REBUTTAL TESTIMONY

OF

MICHAEL R. HUNSUCKER

ON BEHALF OF

CENUTRYLINK, INC

NOVEMBER 15, 2010

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.**

2 A. My name is Michael R. Hunsucker. My business address is 5454 W. 110th Street,
3 Overland Park, Kansas 66211. I am Director of CLEC management for CenturyLink.

4 **Q. ON WHOSE BEHALF ARE YOU SUBMITTING SUPPLEMENTAL REBUTTAL**
5 **TESTIMONY?**

6 A. I am submitting Supplemental Rebuttal Testimony on behalf of CenturyLink, Inc.
7 referred to herein as "CenturyLink."

8 **Q. ARE YOU THE SAME MICHAEL HUNSUCKER WHO SUBMITTED**
9 **REBUTTAL TESTIMONY IN THIS PROCEEDING?**

10 A. Yes.

11 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL REBUTTAL**
12 **TESTIMONY?**

13 A. The purpose of my testimony is to address certain issues raised in the Supplemental
14 Responsive Testimonies of Joint CLEC witness Timothy Gates and Charter witness Billy
15 Pruitt filed on November 1, 2010. To the extent particular statements in the Joint
16 CLECs' or Charter's supplemental responsive testimony are not addressed in my
17 Supplemental Rebuttal Testimony, this does not mean that the Joint Applicants
18 necessarily agree with or acquiesce in those statements. Rather, I have attempted to focus
19 on the major points addressed in the Joint CLECs' and Charter's testimony and to
20 organize my Supplemental Rebuttal Testimony around those points.

21

1 **Q. HOW WOULD YOU CHARACTERIZE THE JOINT CLECs' AND CHARTER'S**
2 **ARGUMENTS IN THEIR SUPPLEMENTAL RESPONSIVE TESTIMONY?**

3 A. The Joint CLECs and Charter use unfounded speculation to manufacture “public interest”
4 and “competitive harm” concerns where none exist. The Joint CLECs and Charter
5 consistently take items out of context, and then manufacture concerns where no such
6 concern should exist. If one takes Mr. Pruitt’s Supplemental Responsive Testimony at
7 face value, for example, that person would conclude that Mr. Pruitt knows more about
8 CenturyLink’s true intent than the company’s own executive management team, even
9 when that supposed intent conflicts with statements the company has made on the record,
10 and including the company’s intent regarding issues the company has not yet begun
11 evaluating.

12
13 I am not going to attempt to point out every instance of Joint CLEC and Charter
14 speculation and provide countering evidence to expose the speculation for what it is. In
15 the interests of brevity, I will provide illustrative examples where appropriate. Further, a
16 fair amount of the Joint CLECs’ and Charter’s Supplemental Responsive testimony has
17 been addressed through testimony already provided by CenturyLink and Qwest in written
18 Rebuttal testimony.

19 **Q. MR. GATES REFERS TO VARIOUS HART-SCOTT-RODINO (“HSR”)**
20 **DOCUMENTS AS SUPPORT FOR HIS CRITICISMS OF CENTURYLINK’S**

1 **UNWILLINGNESS TO PROVIDE INFORMATION ABOUT ITS “DIRECT**
2 **RESPONSE MARKETING EFFORTS”.¹ HOW DO YOU RESPOND?**

3 A. To begin with, Mr. Gates infers CenturyLink should not have any reluctance to hand over
4 sensitive information about its retail operations to its competitors. No doubt the Joint
5 CLECs would be equally protective of their marketing information. CLECs are not
6 entitled to review CenturyLink’s retail marketing strategies, given that they will be
7 competitors as well as customers after this transaction closes. However, and more to the
8 point, Mr. Gates once again provides the Commission with no context by just generally
9 referring to two CenturyLink HSR documents without any page references or landmarks,
10 and then he proceeds to inflate the meaning of the documents beyond any reasonable
11 interpretation.² In his discussion of these two CenturyLink HSR documents Mr. Gates
12 raises a speculative concern about CenturyLink’s future compliance with porting
13 requirements because the documents reveal that CenturyLink in fact tries to prevent
14 “churn,” or loss of customers. Indeed, CenturyLink prospectively tries to induce
15 customers to stay with CenturyLink, and the result is to prevent the future “porting” of
16 that customer to another service provider. However, CenturyLink markets its services in
17 compliance with applicable laws and regulations. Mr. Gates takes a single reference to
18 “porting” and imputes all forms of malicious intent.³ Further, if CenturyLink’s future
19 direct marketing efforts are successful in mitigating customer loss and winning customers
20 back to CenturyLink, this is not “harm to competition;” this is competition in action, just

¹ Gates Supplemental Responsive at 3 and 6.

² Id. at 4-5 (discussing CenturyLink HSR Documents 4(c)-16 and 36).

³ The single page from CenturyLink HSR Document 4(c)-36 that Mr. Gates is apparently referring to at page 93, lines 16 – 17 of his Supplemental testimony is attached as Highly Confidential Exhibit MRH-4HC.

1 as Congress intended when they established current laws promoting competition. I find it
2 remarkable that Mr. Gates would expect this Commission to believe that simply because
3 an ILEC has marketing efforts in place to win and retain customers it can somehow be
4 inferred that there is a regulatory harm that needs to be prevented.

5 **Q. IN ADDITION TO INACCURATE REPRESENTATION, DO YOU HAVE ANY**
6 **OTHER CONCERN REGARDING MR. GATES' INTERPRETATION OF THE**
7 **HSR DOCUMENTS?**

8 A. Yes. Mr. Gates uses CenturyLink's HSR documents to suggest that CenturyLink's "Go-
9 To-Market model" may involve "inappropriate use of CLEC information or inappropriate
10 contact with CLEC end user customers."⁴ He offers no evidence of why CenturyLink
11 would engage in practices that are prohibited by applicable law.⁵ Because Mr. Gates
12 cannot provide any actual evidence, he tries to mask that inability by claiming the CLECs
13 were not able to "investigate" the issue because of CenturyLink's refusal to provide
14 information about the Go-To-Market model. If CenturyLink had "inappropriately used"
15 CLEC information, or had "inappropriate contact" with CLEC end user customers, no
16 Joint CLEC "investigation" would be needed; there would be publicly available
17 complaint documentation and state commission findings regarding CenturyLink's
18 actions.

19 **Q. WHAT CONCLUSION DOES MR. GATES ASSERT BASED ON HIS**
20 **SPECULATIVE READING OF THE HSR DOCUMENTS?**

⁴ Gates Supplemental Responsive at 3.

⁵ 47 USC § 222 (a) and (b).

1 A. Mr. Gates asserts that his opinion of the HSR information provides additional support for
2 adopting the Joint CLECs' proposed conditions. He then specifically identifies proposed
3 Condition 22 which includes number portability in compliance with applicable law, terms
4 to unlock E911 records at the time of porting, addressing trouble reports involving locked
5 E911 records, prohibiting the use of passcodes or Personal Identification Numbers
6 (PINs), and no limitation on the number of ports that can be processed.⁶ That Mr. Gates
7 asserts this conclusion is almost beyond belief.

8 First, CenturyLink already complies with applicable law in regards to the porting of end
9 user telephone numbers and has no limitation on the number of ports processed so Mr.
10 Gates is merely making unfounded insinuations. Next, Mr. Gates' alleged "concerns" are
11 the "inappropriate use of CLEC information or inappropriate contact with CLEC end user
12 customers" and the "retention" and "winback" processes that are in compliance with
13 applicable laws and regulations. I can make no reasonable linkage from these alleged
14 "concerns" to a need for proposed conditions that involve E911 records, E911 trouble
15 reports, refusal of customer-requested PINs, and, if it was an issue which it is not, the
16 number of porting orders processed. In his testimony, Mr. Gates does not attempt to
17 make any such reasonable linkage either.

18 **Q. WHAT IS YOUR OVERALL RESPONSE TO MR. GATES' ARGUMENTS IN**
19 **HIS SUPPLEMENTAL RESPONSIVE TESTIMONY THAT ARE BASED ON**
20 **THE HSR DOCUMENTS?**

⁶ Gates Supplemental Responsive att 5-6.

1 A. As demonstrated by my discussion of just a few of his arguments in his Supplemental
2 Responsive testimony, Mr. Gates appears willing to interpret the HSR documents in
3 whatever way he feels is necessary in order to support the Joint CLECs' unreasonable
4 proposed conditions. This explains, in my opinion, why Mr. Gates has completely failed
5 to attach the cited HSR documents, or pages, to his testimony.

6 **Q. MR. PRUITT IS CONCERNED THAT A NEW ICA TEMPLATE PREPARED BY**
7 **CENTURYLINK WILL INCLUDE PROVISIONS THAT WILL HAVE A**
8 **NEGATIVE IMPACT ON CLECs.⁷ CAN SUCH AN OUTCOME BE POSSIBLE?**

9 A. No. Mr. Pruitt apparently confuses possible terms in a proposed template with the final
10 negotiated and approved terms in a signed ICA. Mr. Pruitt does not explain how a CLEC
11 would fail to negotiate or arbitrate any terms that the CLEC felt were "negative" to its
12 interests.

13 **Q. MR. PRUITT PROPOSES ADOPTION OF A CONDITION THAT REQUIRES**
14 **EXTENDING THE TERM OF CURRENT INTERCONNECTION**
15 **AGREEMENTS ("ICAs") FOR AT LEAST THREE AND A HALF YEARS FROM**
16 **THE MERGER CLOSING DATE SO THAT COMPETITORS WOULD NOT**
17 **HAVE TO RENEGOTIATE INTERCONNECTION AGREEMENTS.⁸ DOES**
18 **THIS CHANGE THE ICA STATUS QUO BETWEEN THE JOINT APPLICANTS**
19 **AND THE JOINT CLECS?**

⁷ Pruitt Supplemental Responsive at 3.

⁸ Id. at 4.

1 A. Yes. Maintaining the status quo means ensuring that the merger does not detrimentally
2 affect the rights and obligation of parties as they currently exist notwithstanding the
3 merger. In other words, maintaining the status quo means to preserve things *completely*
4 *as they are*. In contrast, the Joint CLECs' proposed conditions imply that preserving the
5 status quo means placing the current Qwest-CLEC contractual and process-related
6 relationships in a state of suspended animation. As regards Mr. Pruitt's ICA proposal,
7 existing ICAs have a negotiated and approved term and process for negotiation of
8 replacement ICAs is covered in both the existing ICA terms and in applicable law. The
9 CLECs wish to ignore the term and replacement provisions of the ICAs that they
10 willingly negotiated and signed, and also to deny the Joint Applicants their rights under
11 applicable law. This proposed condition does not maintain the status quo; it *changes* the
12 status quo and does so to the Joint CLECs' unilateral benefit. The proposed condition is
13 therefore inappropriate.

14 **Q. CAN YOU FURTHER CLARIFY WHY MR. PRIUTT'S PROPOSED**
15 **CONDITION IS INAPPROPRIATE?**

16 A. To put Mr. Pruitt's proposal, and all the Joint CLECs' proposed conditions, into the
17 correct context, let us take this merger out of the equation. Both the Joint CLECs and
18 Joint Applicants have rights and obligations granted under applicable law and set forth in
19 interconnection agreements ("ICAs") and in regulatory requirements. None of the Joint
20 CLEC's existing rights and obligations will change directly as a result of this merger
21 taking place. None of Qwest's or CenturyLink's existing rights and obligations will

1 change directly as a result of this merger taking place. Notwithstanding the merger, these
2 rights and obligations protect the Joint CLECs from the “complete uncertainty and
3 potential severe disruption and harm in every aspect of [its] wholesale relationship” that
4 Mr. Gates fears,⁹ and ensure “the much-needed certainty that the Joint CLECs need to
5 continue to operate their businesses and make prudent decisions.”¹⁰

6 **Q. MR. PRUIT ASSERTS CHARTER WILL HAVE TO “ENGAGE IN THE TIME-**
7 **CONSUMING PROCESS OF NEGOTIATING OR ARBITRATING**
8 **PREVIOUSLY SETTLED ISSUES WITH THE POST-MERGER COMPANY.”¹¹**
9 **DO YOU AGREE?**

10 A. No. If the issue is already settled in Washington by Commission determination, then
11 there is no reasonable ability for CenturyLink to reopen that issue to achieve a different
12 outcome. Even if the Commission would accept an arbitration petition on an already
13 litigated issue, CenturyLink has no desire to expend its valuable resources on futile
14 efforts.

15 **Q. MR. PRUITT ASSERTS THAT BECAUSE THE MERGED COMPANY WILL BE**
16 **LARGER IN SIZE, IT WILL HAVE A STRONG INCENTIVE TO USE ITS**
17 **MARKET POWER AS LEVERAGE DURING INTERCONNECTION**
18 **AGREEMENT NEGOTIATIONS.¹² IS THIS AN ACCURATE ASSESSMENT?**

⁹ Gates Responsive at pages 111-112.

¹⁰ Id. at page 112.

¹¹ Pruitt Supplemental Responsive at 5.

¹² Id. at 5.

1 A. No. I do not see any logical linkage of corporate size to a speculative “competitive
2 incentive.” Further, Mr. Pruitt ignores the CLECs’ rights and obligations granted under
3 applicable law and in regulatory requirements and fails to state how the merged company
4 could use its “size” to override applicable law and regulation.

5 **Q. MR. PRUITT SAYS CENTURYLINK VIEWS CABLE COMPANIES AS “KEY**
6 **COMPETITORS” AND SPEAKS TO A SIGNIFICANT PERCENTAGE OF**
7 **CENTURYLINK’S FOOTPRINT THAT HAS ACTIVE CABLE CLEC**
8 **COMPETITION.¹³ HE FURTHER ASSERTS THAT THESE FACTS MEAN**
9 **CENTURYLINK HAS AN INCENTIVE TO DISCRIMINATE AGAINST CABLE**
10 **COMPANIES. IS THIS TRUE?**

11 A. Mr. Pruitt appears to equate “lawfully competing with the cable company” with
12 “discriminating against the cable company.” However, CenturyLink is entitled to
13 compete to the full extent allowed by applicable laws and regulations. Mr. Pruitt does
14 not point to any evidence in the record that CenturyLink has or plans to unlawfully
15 discriminate against the cable companies. Further, Mr. Pruitt goes on to admit that cable
16 companies “have been very successful at competing with CenturyLink’s traditional
17 business by providing competitive voice service in residential markets.”¹⁴ Obviously
18 CenturyLink does not “discriminate against cable companies” today and just as obviously
19 the CLECs’ proposed conditions are not necessary to ensure that cable companies will
20 continue to compete successfully against CenturyLink after the merger.

¹³ Id. at 7.

¹⁴ Id. at 8.

1 **Q. DO YOU HAVE ANY FINAL THOUGHTS TO SHARE WITH THE**
2 **COMMISSION?**

3 A. The Joint CLECs' continue their claims that proposed conditions are necessary to meet
4 the standard for approval of this merger, however, McLeod/PAETEC, one of the
5 members of coalition of Joint CLECs arguing for these conditions, takes a complete
6 opposite position regarding an intervenor's proposed conditions when it is involved as a
7 Joint Applicant in a merger docket. In Pennsylvania, PAETEC has stated the following
8 in a filed Motion:¹⁵

9 "...[t]he protest of [another CLEC] in this proceeding does **not** challenge the
10 statutory requisites of Commission approval of the requested certification.
11 [emphasis in the original] Instead, [the other CLEC's protest] *seeks to inject*
12 *unrelated private intercarrier compensation disputes with the Joint Applicants*
13 *into a certification proceeding.* [emphasis added] ... for the purpose of deciding
14 this Motion, the Commission may grant the Joint Applicants' request without
15 interfering with [the other CLEC's] ability to pursue its legal claims elsewhere.

16 This demonstrates that at least one member of the Joint CLECs believes it is
17 unreasonable to use a merger proceeding to address various interconnection related
18 concerns that can, and should, be properly addressed in other proceedings. This is
19 consistent with the Joint Applicants' position that existing regulations and laws

¹⁵ *Joint Application for All Approvals Under the Pennsylvania Public Utility Code for Indirect Transfer of Control of Talk America, Inc, LDMI Telecommunications, Inc., Cavalier Telephone Mid-Atlantic, LLC and Intellifiber, Networks, LLC to PAETEC Holding Corp.*, Docket No. 1-2010-22200202 (other docket numbers omitted), Motion of Joint Applicants for Judgment on the Pleadings, pgs. 5 – 6 (October 27, 2010).

1 adequately protect the Joint CLECs' interests and that additional conditions, which in
2 many cases seek remedies or protections that are based on speculative harms or unrelated
3 disputes, should be rejected.

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5 A. Yes.

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