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 **JOINT WIRELESS CARRIERS' FINAL POST-HEARING BRIEF [REDACTED]**

JOINT WIRELESS CARRIERS' FINAL POST-HEARING BRIEF

1 Sprint Communications Company L.P. Sprint, Sprint Spectrum, L.P. Nextel West Corp. and NPCR, Inc. ("Sprint") together with T-Mobile West Corporation ("T-Mobile"), referred to collectively as "Joint Wireless Carriers," submit their Final Post-Hearing Brief regarding the proposed merger of CenturyLink, Inc., and Qwest Communications International, Inc.'s operating subsidiaries in Washington[1] (collectively "Joint Applicants" or "Merged Firm"). The Joint Wireless Carriers urge the Washington Utilities and Transportation Commission ("Commission") to approve the Merger only if certain conditions necessary to prevent harm to competition are imposed. These conditions would be in addition to those contained in the Settlement Agreements between the Joint Applicants and Commission Staff, Public Counsel ("Staff Agreement"), 360networks, Integra ("IntegraC Agreement") and DOD/FEA ("DOD Agreement").[2]

2 The Joint Wireless Carriers note that the Joint Applicants contend that the CenturyLink Washington Operating Subsidiaries[3] will not be merged in the transaction for which

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[1] Those operating subsidiaries include Qwest Corporation ("Qwest Corp."), Qwest LD Corp. ("QLDC") and Qwest Communications ("QCC").

[2] Exhs. 1, 3, 5-6 and 8 respectively.

[3] Those subsidiaries include the following entities operating in Washington: CenturyTel of Washington, Inc., CenturyTel of Inter-Island, Inc., CenturyTel of Cowiche, Inc., CenturyTel Long Distance, LLC, CenturyTel Solutions, LLC, CenturyTel Fiber Company II, LLC, United Telephone Company of the Northwest, and Embarq Communications, Inc., collectively referred to as the "CenturyLink Washington Operating Subsidiaries."

approval is sought. The Joint Wireless Carriers urge the Commission to merge all of the Washington operating subsidiaries of the Joint Applicants for regulatory purposes for the reasons set forth in their Brief in Response to List of Commission-Identified Briefing Issues (pp.8-12) filed on January 14, 2011 ("Issues Brief"). In this Brief, we first address the additional conditions proposed by the Joint Wireless Carriers and the reasons why they are necessary to mitigate the competitive harm caused by the Merger. Next, we reply to the arguments raised in the briefs of the Merged Firm and Staff and Public Counsel filed on January 14, 2011.

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I. INTRODUCTION

3 The merger at issue here is huge. After the merger, the Merged Firm will serve a nationwide total of 17 million access lines in 37 states, more than 5 million broadband customers, over 1.4 million video subscribers and 850,000 wireless customers.[4] In Washington, the Merged Firm will increase its market share of Washington ILEC lines to 74 percent or 1.7 million lines.[5]

4 Under RCW 80.12 and WAC 480-143-170, the Commission will reject this merger if "the proposed transaction is not consistent with the public interest" and it must cause "no harm."[6] An important consideration – overlooked in this proceeding – is the continued existence of a robust, competitive marketplace [which] is essential to satisfying the 'no harm' standard for this transaction.[7] In previous merger proceedings, the Commission found that the transaction's "impact on competition at the wholesale and retail level, including whether the transaction might distort or impair the development of competition must be considered in determining if the merger is in "the public interest."[8] The Commission reiterated the importance of this consideration in this proceeding noting "Staff suggested, and rightly so, that the merger's impact on access charges and competition is within the purview of our examination."[9]

5 Clearly, a merger of this magnitude raises a well-founded concern regarding the Merged Firm's enhanced market power and its anticompetitive behavior that would harm Washington's competitive marketplace. Neither the Staff Agreement nor the Integra Agreement sets forth sufficient conditions to prevent harm to a robust, competitive marketplace in Washington. In fact, without additional or modified conditions, the merger will cause real harm to the competitive marketplace. Therefore, as explained

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[4] Appleby, Exh. JAA-1T 4-0; 23-5:5.

[5] Appleby, Exh. JAA-1T 5:7-9.

[6] *In the Matter of Joint Application of Verizon Communications, Inc., and Frontier Communication Corporation For an Order Declining to Assert Jurisdiction Over, or, in the Alternative, Approving the Indirect Transfer of Control of Verizon Northwest, Inc.*, Docket UT-090842, Order 06, Final Order Approving and Adopting, subject to Conditions, Multiparty Settlement Agreements and Authorizing Transaction at p.7, ¶ 9 (April 16, 2010) ("Verizon/Frontier Order").

[7] Verizon/Frontier Order p.6.

[8] Verizon/Frontier Order , p. 53, ¶ 117.

[9] Docket UT-100820, Order 09, ¶ 20.

herein, the Joint Wireless Carriers have proposed additional conditions that will prevent such competitive harm, which should be adopted if the merger is approved.

6 The Joint Wireless Carriers request the Commission impose the following five conditions found in Mr. Appleby's testimony in order to be able to find that the merger will cause "no harm":

- All legacy CenturyLink ILECs in Washington should be required to reduce their intrastate switched access rates to mirror the intrastate switched access rates and rate structure of the legacy Qwest ILEC in Washington. Thereafter, all Merged Firm ILEC intrastate access rates should be reduced to the Qwest ***interstate*** level over time.[10]

- All interconnection agreements with the post-merger CenturyLink ILECs (CenturyTel, Embarq and Qwest ILECs) in Washington should be extended forty-eight (48) months.[11]

- All Washington wholesale customers must be allowed to consolidate and port their interconnection agreements within the service territories of the post-merger CenturyLink ILECs[12] in Washington (including both Legacy CenturyLink and Qwest ILECs).

- All post-merger CenturyLink ILECs in Washington must adopt and maintain the best practices of Qwest for porting numbers to competitors by complying with the FCC's one-day porting requirement and not degrading the existing Qwest porting capabilities.

- The Commission, the courts, and the FCC shall each have jurisdiction to enforce these merger conditions, and the Merged Firm shall be (i) liable for the attorney fees of parties who are successful in an action to enforce the conditions, and (ii) subject to having the condition(s) at issue in the successful enforcement action extended an additional 48 months at the enforcing party's option.[13]

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[10] Appleby, Exh. JAA-1T 29:12-34:5.

[11] Appleby, Exh. JAA-1T 39:14-41:19.

[12] Appleby, Exh. JAA-1T 43.

[13] Appleby, Exh. JAA-7HCT 5:12-6:4.

II. A SPECIFIC MERGER-RELATED HARM WILL OCCUR BECAUSE THE MERGED FIRM WILL BE ABLE TO USE ITS OWNER'S ECONOMICS TO UNFAIRLY WIELD MARKET POWER.

7 Sprint witness Appleby identified tangible competitive harm that will result from the merger. Namely, the Merged Firm will be able to use "owner's economics" to avoid costs that the Merged Firm can impose on its competitors, which will distort the competitive market.

8 "Owner's economics" is a commonly used term that describes the economic benefits that stem from owning all of the network functions and facilities needed to transmit telecommunications. The owner – the Merged Firm – incurs only the actual network cost of the functions the network provides.[14] It is able to avoid paying wholesale rates that it otherwise would have had to pay to unaffiliated companies for either transport or termination functions by keeping its traffic "on-net."[15] The combined companies' networks will allow them to enjoy significant expense savings by self-provisioning more network services and eliminating the need to purchase these services from a third party carrier. For instance, by adding Qwest's comprehensive national long distance network to CenturyLink's existing local exchange facilities, all of the Merged Firm's ILECs will now enjoy significant expense savings on the long distance service they provide. Likewise, by adding local exchange facilities, the Merged Firm long distance providers will save money on the cost of delivering long distance calls to local exchange customers. All other companies unaffiliated with the Merged Firm who have no choice but to use its network as it will cover 37 states, must continue to pay whatever wholesale rates the Merged Firm chooses to charge.

9 Despite the purported ignorance of the term "owner's economics" by the CenturyLink Treasurer[16] the Joint Applicants identified "owner's economics" benefits throughout its internal merger analysis.[17] For instance, one CenturyLink document noted **[Begin Highly Confidential Data]**[18] **[End Highly Confidential Data]**[19]

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[14] Appleby, Exh. JAA-1T 44:15-45:18.
[15] Exh. JAA-12HC.
[16] TR. 488 l.4.
[17] The Joint Applicants use this term several times in this analysis. Exhs. JAA-14C, 16C.
[18] Exh. JAA-10HC.

10 The most blatant illustration of the benefits the Merged Firm will receive due to "owner's economics" will be its ability to avoid paying its existing bloated switched and special access charges.[20] In a previous ruling in this docket the Commission recognized that access charges are an issue in this proceeding to be considered.[21] None of the settlement agreements before the Commission address wholesale access rates, which have been punted to a far-off AFOR proceeding for consideration.[22] The Joint Wireless Carriers have stated why this delay will be extremely harmful to competition in their Issues Brief. Here, however, we renew our request that the Commission should impose a condition that is necessary to prevent tangible competitive harm, by at least equalizing, as a first step, the disproportionate intrastate access rates of the CenturyLink CLECs with those of the Qwest CLEC, and then transitioning those rates to interstate levels. The request of the Joint Wireless Carriers for this merger-related condition is no different than the conditions in the Staff Agreement that provides for rate treatment favorable to retail customers.[23] If a condition is requested to mitigate a merger-related harm, it should be considered by the Commission, which has full authority to make a rate adjustment that is necessary to avoid competitive harm to wholesale customers due to the merger. The Commission's responsibilities to prevent merger-related harm extend to both wholesale and retail customers.[24]

11 The specific harm the Joint Wireless Carriers seek to avoid is graphically set forth in Exh. JAA-2C, which shows the huge discrepancy between the intrastate access termination rates of CenturyTel ILECs and Qwest, as well as the avoided costs they will receive due to owner's economics.

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[19] Exh. JAA-12HC.

[20] Exh. JAA-7HCT 5:15-19. In addition, the Merged Firm will also realize owner's economics on the incremental amount of long distance traffic that it can move from third-party long distance transport providers currently handling it to the Qwest long distance transport network. These long distance transport savings are calculated by comparing the price the Merged Firm's entities pay other carriers for long distance transport versus Qwest's cost to carry the incremental traffic on its long distance transport network. When a company self-provisions, the economic cost is the actual cost the company incurs to provide the service to itself. On the other hand, when a company must purchase the function from another carrier, the actual cost is the price the company must pay the other carrier. Exh. JAA-7HCT 1:7-16.

[21] Docket UT-100820, Order 09 ¶20.

[22] TR. 224, l. 17-226 l. 6.

[23] Appleby, Exh JAA-1T 6:12-13.

[24] Tr. 264, ll. 6-16.

12 The Joint Applicants claim they will not be avoiding those costs because they will maintain separate legal entities that will continue to "pay" access charges and to "receive" access charge revenues. This is not true because accounting rules require such intracompany transactions to offset each other.[25] All of the revenues and expenses would be reported up to the ultimate parent company, CenturyLink, Inc.[26] The only real cost the Merger Firm will experience for the network access is the much lower actual cost of the network functionality.[27]

13 In sum, the Merged Firm will enjoy owner's economics with respect to the cost of local traffic termination, namely switched access and special access services. This can be demonstrated through a hypothetical example using a medium-size business located within a CenturyLink local service territory in Washington, ABC Company ("ABC"), that has voice and data service needs. With three T-1 special access circuits, a long distance ("LD") carrier like Qwest LD or Sprint LD can connect ABC to the carrier's network for the provision of voice and data services. In addition to other self-provisioned network components, the carrier also would have to terminate ABC's voice traffic to other LECs, including CenturyLink ILECs in Washington and across the nation. To serve ABC prior to the merger, Qwest LD or Sprint LD would need to purchase the three T-1s from the CenturyLink ILEC and incur terminating access charges, both intrastate and interstate, to complete ABC's voice calls. Each of these access services are priced far above the actual cost,[28] with the high switched and special access rates of the CenturyLink ILEC impacting Qwest LD and Sprint LD equally. To collect a profit on the service provided to ABC and maximize shareholder return, both Qwest LD and Sprint LD would each be forced to price their retail service offerings to ABC to recover the access costs imposed by the CenturyLink ILEC.[29]

14 Once the merger is complete, Qwest LD and the CenturyLink ILECs will be part of the same Merged Firm. The merger has not changed the circumstances for Sprint LD,

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[25] Appleby, Exh JAA-1T 6:7-10.
[26] Exh. JJ-2.
[27] Appleby, Exh. JAA-1T6:12-13.
[28] Appleby JAA-1T 9:10-13. CenturyLink's special access rates are also above actual cost. Sprint did not demonstrate that in this proceeding, however, because no merger conditions on special access services in Washington are requested.
[29] Appleby Exh. JAA-2C.

or any other LD carrier unaffiliated with the Merged Firm, to serve ABC. To serve ABC's telecommunications needs, Sprint and all unaffiliated carriers will still need to pay the same excessively high switched and special access charges to the CenturyLink ILEC. Qwest LD will have to "pay" them, too, but its ability to serve ABC will have changed, because Qwest LD will view ABC's business as an opportunity to generate profits for the entire Merged Firm, which will only truly bear the actual cost – not the tariffed rates – of access.[30] This provides the Merged Firm with an opportunity to price its services so as to undercut its competitors, as discussed more fully below.

15 This hypothetical example illustrates the benefit of owner's economics that Qwest LD will receive post-merger which enables the Merged Firm to price its services so as to undercut its competitors, and ensure that its competitors cannot compete on a level playing field. As long as the price of Qwest LD's retail offering to ABC wins the bid and the price is above the actual cost of the services provided to ABC by all the entities inside the Merged Firm, the Merged Firm will generate a profit on ABC's services. Unlike Sprint LD, Qwest LD no longer needs to account for the access costs it incurs internally within the Merged Firm because those costs to Qwest LD are revenues to a Qwest LD affiliate within the Merged Firm. Qwest LD's pricing decision can therefore be based on the much lower actual cost of the access functions. The merger thus clearly will provide Qwest LD with a competitive advantage over Sprint LD and all other non-affiliated LD Carriers attempting to bid and win ABC's telecommunications business. Specifically, Qwest LD will be able to price its services low enough to undercut its competitors that must account for the excessive access charges in their pricing decisions.

16 Further, in addition to the T-1 costs, as discussed above, any unaffiliated LD carrier serving ABC will incur switched access costs to complete ABC's voice calls. The competitive advantage the Merged Firm's carrier will receive is further enhanced because of the disparity in the intrastate access rates of the CenturyLink Washington ILECs and Qwest Corp. While the Merged Firm's switched access rates overall will be excessively higher than cost, the CenturyLink Washington ILECs' rates are up to seven times higher than Qwest's. The Qwest ILEC's current intrastate access rate is $.0.228 per minute, but the same rate for the CenturyLink Washington ILECs is from $.0272 to $.1464. The cost

[30] Appleby Exh. JAA-1T 10:1-13.

of intrastate access service is no higher than $.0007 per minute.[31] This intrastate switched access service margin provides the Merged Firm the same type of unfair advantage in competing for the retail services of ABC as the T-1 wholesale services did. Accordingly, the competitive retail providers will be invoiced for inflated access charges by the Merged Firm's ILECs, and because of this will be unfairly disadvantaged in price comparisons with the Merged Firm's voice service offerings in the market.

17 The Joint Applicants acknowledge that they no longer need be concerned with the access prices that the Qwest IXC will be charged by its affiliated ILECs. **[Begin Highly Confidential Data]** [32] **[End Highly Confidential Data]** This opportunity arises only because the Merged Firm's accounting will completely offset the excessive access rates with the revenues recorded on an intra-company basis. The bottom line is that competitors in Washington will be harmed if the merged Firm is allowed to maintain the artificially high costs it can impose upon competitors to interconnect to the Merged Firm's expanded network, which the Merged Firm can avoid. Telecommunications service choices and prices for Washington consumers will be adversely impacted. Adopting the conditions proposed by the Joint Wireless Carriers will help prevent the competitive harm discussed above.

III. THE MERGED FIRM'S ENHANCED MARKET POWER NEEDS TO BE CONSTRAINED TO PREVENT HARM TO WSAHINGTON RETAIL AND WHOLESALE CUSTOMERS

18 The synergies and economics 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 anti-competitive behavior more than legacy Qwest or legacy CenturyLink could do absent the merger.[33] As discussed above, "owner's economics" enable the Merged Firm to tilt the competitive landscape in its favor, if left

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[31] Exh. JAA-2C.

[32] Exh. JAA-18HC.

[33] The FCC acknowledged the increased incentive and ability for competitive harm in the case of a merger of two ILECs in the Embarq/CenturyTel Approval Order. The FCC stated: "A merger between two incumbent LECs may increase the merged entity's incentive to engage in anticompetitive behavior by allowing it to capture or internalize a higher proportion of the benefits of such anticompetitive strategies against regional or national competitors…The large the resulting incumbent LEC is, the greater is its ability to internalize these spillover effects." Ex. MRH-20, ¶ 33, f.n. 106.

unchecked. Immediate action is required by the Commission to keep this competitive landscape in balance. Therefore it should not delay addressing needed access charge reductions until an AFOR proceeding three to four years from now.

19 The Joint Applicants claim that they are steadily losing local access lines – that is, traditional wireline voice service customers, suggesting that the Merged Firm could not withstand a reduction in access revenues. This is a red herring argument because the true economic value of the Merged Firm is not measured by the number of local wireline voice service customers, but by the underlying combined networks of Qwest and CenturyLink that will enable the provision of numerous other services such as broadband Internet service and Internet protocol television ("IPTV"), either as standalone services or bundled with traditional local and long distance voice services. The ability to offer these other services presents a significant revenue opportunity that more than offsets any losses attributable to a decline in traditional local voice service. In sum, the financial viability of the ILEC holding companies cannot be determined by examining the trend in local access lines. The Commission must consider all of the services currently provided, as well as the future revenue opportunities associated with services that will be provided, on the network in evaluating the merger. Further, such consideration will show that the Merged Firm does not require high switched access rates to cover the network costs of providing voice services when it will be offering other telecommunications and data services that more than cover its network costs. In short, the costs of the proposed condition of the Joint Wireless Carriers can be absorbed by the Merged Firm, without the need to rebalance rates.[34]

20 The Merged Firm will continue to be the dominant provider of landline service within its service area.[35] The offering of additional non-voice services will help the Merged Firm to compete in the market. The Merged Firm believes **[Begin Highly Confidential Data]**."[36]**[End Highly Confidential Data]** The Joint Petitioners' ILECs

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[34] See, Tr. 437-438. Mr. Appleby explains there is no need to rebalance local rates since the Merged Firm's information shows that it will continue to be financially healthy due to new revenue opportunities and cash on hand that it distributes as dividends in amounts totaling more than $10 per access line per month.

[35] Appleby, Exh. JAA-7HCT 13:12-17.

[36] Exh. JAA-22HC.

have transitioned their networks from providing only voice service to also providing broadband and entertainment services. As Sprint witness James Appleby explained in filed testimony:

> The ILEC copper network that was built to provide quality voice service was augmented with DSL technology over the past ten years to provide broadband services. This involved installing electronic components to the network to connect customers' local loops to transport facilities that connect to the internet. The distance between the electronic device and the customer's location determines the bandwidth or speed of the customer's internet connection. As customers demanded faster internet connections and the ILECs identified other services such as video entertainment that can be provisioned over those broadband networks, the ILECs have extended fiber facilities closer to the customers (fiber to the node) and then installed electronics closer to the customers to connect that fiber to the copper loops.[37]

21 The Merged Firm has acknowledged the existing network in place will facilitate the latest transition to provide IPTV. The Network President of CenturyLink states **[Begin Highly Confidential Data]** .[38]**[End Highly Confidential Data]** Clearly, retail customers do not view Qwest solely as a provider of local voice service. In fact, the customers view Qwest as a broadband provider as much as they view it as a voice service provider based on their purchase decisions.[39] As a result of these additional non-voice services, the Merged Firm has a significant opportunity to increase the average revenue per user (ARPU). For Qwest, the mass market ARPU has increased from $45.83 in the first quarter of 2005 to $61.64 in the first quarter of 2010, a 34.5% increase.[40] In a similar period, legacy Embarq reported consumer ARPU increasing from $49.60 in the first quarter of 2005 to $56.71 in the first quarter of 2009, a 14.3% increase.[41] Clearly, the Merged Firm has opportunities to increase ARPU given Qwest's acknowledgment that **[Begin Highly Confidential Data]** [42][43] **[End Highly Confidential Data]**

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[37] Appleby, Exh. JAA-7HCT 14:12-15:4.
[38] Exh. JAA-25HC.
[39] Appleby, Exh. JAA-7HCT 16:4-7.
[40] Qwest quarterly public financial statements.
[41] Embarq quarterly public financial statements.
[42] Exh. JAA-30HC..
[43] Exh. JAA-31HC.

22 The Joint Petitioners' higher revenues from additional non-voice services contribute to higher profit margins in the mass markets – Qwest's profit margin on mass market revenues increased from **[Begin Highly Confidential Data] [End Highly Confidential Data]**[44] from 2007 to 2009. In addition, the cost of Qwest's high-speed Internet service in 2009 was **[Begin Highly Confidential Data] [End Highly Confidential Data]**.[45] This type of cost efficiency will clearly drive margin improvements, especially if the Merged Firm is able to penetrate the broadband market more deeply, as it forecasts it will.

23 Wireless backhaul is essential to today's wireless services industry and to the continued development of wireless data services. As Sprint witness James Appleby noted in filed testimony:

> Wireless services are only truly wireless for a very small portion of the end-to-end communications path, from the customer's handset to the wireless cell tower. After that point they usually traverse landline facilities. In addition, wireless customers are demanding more and more bandwidth for the services that today's smart phones can provide - email, texting, and streaming mobile video - and to meet this demand wireless carriers are augmenting the bandwidth between their cell sites and the mobile carriers' first switching location. Wireless carriers rely on special access for these connections.[46]

24 The Merged Firm's investment in FTTC means more opportunity for it to raise revenues from the captive wireless carriers in this market. Once again, the Merged Firm has market power as a result of the substantial service opportunities its ubiquitous network creates, and this provides yet another opportunity for the Merged Firm to undercut its competitors.[47] The Merged Firm has significantly increased the potential

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[44] Exh. JAA-32HC.

[45] *Id.*

[46] Appleby Exh. JAA-7HCT 21:9-16.

[47] Qwest only agrees to build FTTC **[Begin Highly Confidential Data] [End Highly Confidential Data]**. Of the estimated **[Begin Highly Confidential Data] [End Highly Confidential Data]** that will have bandwidth requirements that justify FTTC deployment by **[Begin Highly Confidential Data] [End Highly Confidential Data]**, Qwest already has contracts for **[Begin Highly Confidential Data.[47][End Highly Confidential Data]**. With paybacks guaranteed as a result of **[Begin Highly Confidential Data] [End Highly Confidential Data]** and **[Begin Highly Confidential Data] [End Highly Confidential Data]**[47] of the market addressed to date in Qwest's service area, the Merged Firm can use its near-monopoly market share of local access facilities to continue to dominate the wireless backhaul market into the future. (*See* Exhs. JAA-37HC-39HC).

revenue it can generate from offering its many retail services to a vastly expanded customer base. The Merged Firm also has significant opportunities to leverage its position as a near-monopoly of certain wholesale services into the future, such as FTTC.

25 The ability to undercut competitors' prices based upon massively inflated access rates is anti-competitive and discriminatory; it ensures competitors cannot compete on a level playing field. Ultimately, Washington consumers pay the price in the form of reduced competitive service options and thus higher than necessary rates.[48] The Joint Wireless Carriers' proposed conditions are necessary to ensure the Merged Firm is not enabled to wield its market power to the detriment of its competitors and Washington consumers. In particular, Condition One relating to switched access charges is necessary to prevent the Merged Firm from continuing to burden its competitors with exorbitant switched access rates, a burden the Merged Firm itself will not have to bear due to owner's economics.

26 Mr. Appleby's testimony identifies the revenue impact of reducing the Century Link ILECs' access rates to the same rates of the Qwest ILEC in Washington.[49] The revenue impact of the proposed access charges reductions in total, as calculated by the Joint Wireless Carriers of **[Begin Highly Confidential Data]** **[End Highly Confidential Data]**[50] is far less than the estimated $57.5 million Washington-specific operating expenses synergies of the Merger.[51] Given the Merged Firm's substantial revenue growth opportunities, as discussed above, due to the merger, the access charge reductions, needed to facilitate a truly competitive marketplace in Washington are fully warranted.

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[48] TR 418 ll. 19-21.
[49] Ex. JAA-1CT, p. 32, Ex. JAA-4c.
[50] Exh. JAA-4C.
[51] TR. 416 11. 10-11.

IV. CONSOLIDATION, PORTING, AND EXTENSION OF EXISTING ICAS MINIMIZES RISK OF ANTICOMPETITIVE BEHAVIOR WHILE MAXIMIZING SYNERGY SAVINGS[52]

27 The record in this case shows that competing carriers, including the Joint Wireless Carriers, have a number of interconnection agreements ("ICAs") in place with the CenturyTel and Qwest Washington ILECs, many of which have varying rates, terms and conditions. Managing multiple ICAs – both across different states and within the same state – is costly and burdensome, and increases the risk of anticompetitive behavior. In Washington alone, CenturyLink has 35 ICAs with CLECs and 27 with wireless companies.[53] While Qwest, a significantly larger company, has reported 135 Washington ICAs with CLECs,[54] 17 with wireless companies in Washington. The sheer volume of ICAs that the Merged Firm will have in Washington creates a heightened risk that the Merged Firm will use its enhanced market power to raise costs for competing carriers to access its greatly expanded network by requiring re-negotiation of critical function and pricing terms in its ICAs.

28 Condition 3.a. of the Integra Agreement extends existing ICA's between Integra and Qwest in Qwest legacy territory for thirty-six months from the merger closing date. The Joint Applicants state that this term will be made available to other requesting CLECs once the Commission approves the Integra Agreement. The Integra settlement, however, only addresses the needs of Integra and primarily applies to interactions with the Qwest ILEC as Integra offers services only in Qwest ILEC serving areas.[55]

29 The Joint Wireless Carriers submit that none of the settlement agreements before the Commission put in place conditions that are sufficient to ensure the existence of a

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[52] The FCC has explicitly recognized the competitive harm risk and imposed conditions on a number of other ILEC mergers that are similar in size to this one in order to reduce the delay and transaction costs ILECs can impose during the interconnection agreement process. *BellSouth Corporation and AT&T, Inc. Application Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission's Rules for Consent to the Transfer of Control of BellSouth Corporation to AT&T Inc.*, 22 FCC Rcd 5662, Appendix F at 5809-5810 (2007) ("AT&T/BellSouth Merger Order"); *Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶¶ 373-376, 389 (1999).

[53] Appleby, EXH. JAA-1T 35:1-5.

[54] *Id.*

[55] TR 342, ll. 13-15.

robust, competitive marketplace. These agreements do not protect the vast majority of the wholesale competitors in Washington in any meaningful way.

A. Any Interconnection Agreement Term Extension Should Cover the CenturyLink ICAs.

30 For no well-founded reason, the Merged Firm has refused to apply the 36-month ICA extension to the CenturyLink Washington ILECs. The Joint Wireless Carriers have ICA's with those ILECs. Just as it is important for CLECs and CMRS carriers to have certainty regarding the status of their Qwest ICAs, it is equally important to allow CLECs and CMRS carriers to extend their ICAs with CenturyLink at their option.[56] A condition that extends only to the Qwest ICAs raises the costs for interconnecting carriers as they could be forced to renegotiate and arbitrate their CenturyLink ICAs well before the Qwest extensions expire. Rather than expending resources in negotiating and arbitrating ICAs, interconnecting carriers would rather focus on providing competitive services. This same concern applies for both the Qwest and CenturyLink ICAs. Therefore, extensions of ICAs should not be limited to Qwest ICAs.

31 CenturyLink's Mr. Hunsucker claims there is no need to extend the CenturyLink ICAs because they already under extension under the FCC's merger approval of the CenturyTel/Embarq merger. Those extensions, however, expire in 2012 and the 3 year extension for the Qwest agreements under Integra Settlement, Condition 3.A. will last until 2014.[57] Since the extensions do not extend until the same date, interconnecting carriers will be forced to incur additional transactional costs by undertaking the negotiation and arbitration process much sooner for the CenturyLink agreements than the Qwest agreements.

Furthermore, as a condition for FCC approval in the CenturyTel/Embarq Merger,[58] both of the ILECs agreed to extend their ICAs, not just the ILEC that is being acquired as is reflected in the Integra Settlement. Witness Hunsucker could not identify any technical reasons why the Merged Firm could not apply the extensions to the CenturyLink ILECs

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[56] TR 422 ll.1-25.

[57] Tr. 346 –Tr. 347.

[58] Tr. 368.

too.[59] Nor did he identify any financial reasons why the extensions should not equally apply to the CenturyLink ICAs.[60]

32 Extension of Qwest ICAs but not the CenturyLink ICAs deprives interconnecting carriers like Sprint of the efficiencies from the Merger that the Merged Firm will achieve. Rather than allowing competitive carriers to at least work under all existing ICAs, exempting the CenturyLink ICAs from an extension requirement will force competitive carriers to juggle different ICAs of varying lengths. If a benefit of the merger is to obtain true synergies then these should be achieved in all areas of the Merged Firm's operations. In the end, the Merged Firm's reluctance to extend the extension condition to the CenturyLink ICAs is merely a vehicle for it to impose costs upon its competitors.

B. The ICAs Should be Extended for Four Years.

33 The second reason Condition 28.a is insufficient is that the extension is only for three years rather than the four years that Sprint requested in its testimony.[61] A four-year extension is more appropriate as it will give interconnecting parties like Sprint additional time to work under the existing ICAs. If amendments are requested by CenturyLink due to changes in the law, the existing ICAs have provisions to address that situation. Four-year extensions rather than three-year extensions will help minimize the costs that the Merged Firm can impose on its competitors.

V. CONSOLIDATION OF THE MERGED FIRM'S ICAs INTO ONE STANDARD ICA REDUCES COSTS WHILE MINIMIZING THE RISK OF ANTICOMPETITIVE CONDUCT.

34 One of the key competitive roadblocks for carriers such as Sprint is the existence of many separate interconnection agreements with ILECs around the country. Negotiating, monitoring, renewing and complying with the agreements impose significant transaction costs for competitive carriers. Minimizing these transaction costs would provide a public benefit because it would enable competitive carriers to pass cost savings through to customers in competitive rates. One obvious way to do this would be to move toward fewer interconnections agreements. In a merger situation like the present

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[59] Tr. 347 –Tr. 348.

[60] Tr. 348.

[61] Appleby Exh. JAA-1T 38:10-13.

one, common sense and sound public policy points to requiring the same interconnection agreement(s) for the Merged Firm. After all, if CenturyLink and Qwest justify their merger by extolling the financial synergies of running a consolidated company why shouldn't they be required to consolidate their many interconnection agreements? The Integra Agreement's interconnection provisions fail to move toward this goal in a meaningful way.

35 The Merged Firm asserts that the proposed merger is in the public interest because all the synergies CenturyLink and Qwest will realize are presumptively beneficial for the Merged Firm's customers. While the Joint Wireless Carriers do not object to the notion that the Merged Firm should be able to enjoy significant synergies by combining the two companies' networks, management, and other operations, we, as wholesale customer also should be able to benefit. This can be done by allowing competing carriers to consolidate/port existing ICAs with the Merged Firm. Qwest and CenturyLink have identified no technical reason why an ICA from Qwest will not work in CenturyLink Territory, even though the Merged Firm seems to have no problem implementing the uniform Integra Agreement in at least nine states[62]speculating only that such porting sounds difficult to do.

36 Like contract extensions, porting a contract from one ILEC to another in the Merged Firm avoids the burdensome incremental cost of contract negotiations and potential arbitration to establish a new contract. With more than 100 ILECs in the Merged Firm[63] (and its stated plan to retain each legal entity), management of the interconnection arrangements will be unnecessarily burdensome. For instance, if Sprint needs to interconnect with multiple Merged Firm entities in multiple locations Sprint will need to negotiate with such entities on a myriad of issues over and over again. It makes much more sense for the industry as a whole to move towards minimizing the number of ICAs across the country. Porting existing agreements from one ILEC to another within the Merged Firm, even if the agreement originated in another state would promote this goal. The porting of existing agreements may also result in one nationwide

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[62] TR. 350.

[63] 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. Appleby Exh. JAA -1T n. 58.

interconnection agreement. In sum, porting of interconnection agreements prevents the Merged Firm from imposing unnecessary negotiation and legal costs upon its competitors.

37 The Merged Firm's refusal to even consider consolidation and porting of ICAs is evidence of the real risk it will exercise its newly enhanced market power as the third largest ILEC in the United States to impose less favorable terms on competing carriers. Once the Merged Firm is created, however, it will be the largest ILEC in Washington – significantly larger than the CenturyTel and Embarq companies that operated previously. For the Joint Petitioners to insist that the terms and conditions of the existing CenturyLink ICAs must be maintained when the economics that justified those terms and conditions in the first place no longer exist, is a fair indication of the enhanced risk that the Merged Firm would exploit this opportunity to abuse its market power.

38 In addition to the porting of existing ICAs from one Merged Firm entity into another within Washington, there are also significant efficiencies if a carrier is able to port the entirety of an existing ICA, except for State-specific rates, from another state in the Merged Firm's territory to Washington. "State-specific rates" would not include billing arrangements such as bill-and-keep for the exchange of traffic, or contractual provisions to share the costs of interconnection facilities.[64]

39 State commissions and the FCC have imposed this condition for other mergers similar in size and scope to this one, giving competitive carriers the right to consolidate and port ICAs among the merged companies' operating entities. The FCC required porting of agreements between states and legal entities for the 22 AT&T Corporation ILECs, which of course involved different networks and operations similar to CenturyLink and Qwest.[65] At the state level, the Illinois Commission also required porting of interconnection agreements in both the SBC-Ameritech merger, and the Bell Atlantic-GTE merger.[66]

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[64] Appleby, Exh. JAA-1T 40:10-20; 41:1-9.

[65] *In the Matter of AT&T and Bellsouth Corporation Application of Transfer of Control*, WC Docket 06-74 (released March 26, 2007).

[66] ICC Dockets Nos. 98-0555 and 98-0866..

VI. THE COMMISSION SHOULD SPECIFY HOW MERGER CONDITIONS ARE ENFORCED.

40 Based on Sprint's experience in attempting to implement intended competition-enhancing conditions imposed on other ILEC mergers, the Joint Wireless Carriers are 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. In addition, Sprint has encountered objections from ILECs as to what the appropriate forum is for bringing a regulatory or legal action to enforce merger conditions; specifically, challenges to state commission jurisdiction relating to enforcement of FCC merger conditions.[67] 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, the Commission should specify how merger conditions are to be enforced.

VII. A MOST-FAVORED NATIONS CLAUSE SHOULD BE ADDED

41 The Joint Wireless Carriers request that the Commission impose conditions upon the Merged Firm that are imposed upon them by other states and the FCC.

VIII. SPRINT SUPPORTS THE CONDITIONS PROPOSED BY THE JOINT CLECS

42 Specifically, Sprint supports the Joint CLECs' proposed condition that allows for interconnecting carriers to have a single point of interconnection with all of the Merged Firm's ILECs in a particular state. Once again, the Merged Firm wants to take advantage of the synergies of the merger but deprive its wholesale customers of the benefits of the synergies. A single point of interconnection reduces the trunking and facility costs for competitors. Just as the Merged Firm realizes network synergies, so, too wholesale competitors should be able to reduce their interconnection costs.

43 In addition, Sprint supports the condition proposed by the Joint CLECs that prohibits any of the CenturyLink ILECs from exercising the rural exemption. The Merged Firm is the third largest ILEC in the nation. It makes no sense for a company of

[67] Appleby, Exh. 1-T 44:16-20, 45:1-20.

this size and scale to be able to claim the rural exemption under § 251(f) to protect it from competition.

IX. JOINT WIRELESS CARRIERS' REPLY ON COMMISSION-IDENTIFIED ISSUES

44 In the Joint Wireless Carriers' Initial Brief in response to the list of Commission-Identified Briefing Issues, the Joint Wireless Carriers showed: (1) the Commission must consider the impact on competition in the context of an AFOR and that the Staff Agreement of the Merged Firm and Staff, Public Counsel, and DOD/FEA delays the Qwest AFOR renewal and the CenturyLink AFOR and therefore negatively impacts competition and the public interest; (2) the delay of the earnings review of the CenturyLink companies perpetuates the harm caused by the impact of the CenturyLink ILECs' high intrastate access rates if they are not reduced by the Commission in an additional condition here to address the specific merger-related harms; (3) the Merged Firm's intention to maintain five separate operating entities facilitates excessive intrastate access rates charged by the CenturyLink ILECs, differences in interconnection agreements that adds costs for competitors, inefficient network configurations, and the claim of the rural exemption for the three legacy CenturyTel ILECs; and (4) under the public interest standard the Commission has the authority to remove the Section 251(f)(1) exemption claimed by the three CenturyTel ILECs.

45 Here, we reply to the primary arguments made in the Merged Firm's Brief and the Brief of Staff and the Public Counsel ("Staff/Public Counsel Brief") in responses to the Commission-identified issues.

1. **Assume, *arguendo,* that the Commission adopts a condition requiring the merged companies to file a petition for an Alternate Form of Regulation (AFOR) by a date certain. What would be the effect of either a Commission rejection of the AFOR petition or the failure of the merged companies to accept a Commission-conditioned AFOR? Specifically, what rate structure would be in effect in the various Qwest and CenturyLink territories? Would Qwest rates be set under the expired AFOR (the one currently in effect), revert to those in effect before the AFOR, or some other structure?**

46 The impact of the Commission declining to approve the AFOR filings contemplated in condition 3 of the Staff Agreement appears to be relatively uncontroversial with respect to retail rates. The Joint Wireless Carriers do not disagree with the analysis provided by the Staff/Public Counsel Brief and Merged Firm's Brief that the rates of all services that are not competitively classified will be subject to rate of return regulation.

47 Of particular interest here upon review of the Merged Firm's Brief, is the extent of competitively classified services that the Merged Firm ILECs have outside of the AFOR regime. For CenturyLink, bundled and intraLATA toll services are competitively classified[68] and for Qwest toll, business services, directory assistance, and certain high capacity services in certain markets are competitively classified.[69] Of course, all other Qwest retail services except basic local service are not price regulated under the Qwest AFOR. The range of pricing flexibility for the CenturyLink and Qwest services now demonstrates the ability the Merged Firm has to recover more of their expenses from their own customers rather than applying bloated, above-cost access rates to other carriers and their customers. Of course, pricing flexibility on bundles and business services are on top of the revenues that the Merged Firm receives from high speed Internet and video services detailed by Mr. Appleby in his supplemental responsive testimony.[70]

48 While the Commission certainly has the right to reject future AFOR filings of the Merged Firm's ILECs, the more important factor to consider is that the Merged Firm has more than adequate market-based opportunities to provide competitive services. The Commission, however, should no longer accept the harm to competitors arising from the excessive intrastate access rates of the Merged Firm that is exacerbated by the Merged Firm's increased use of the owner's economics made possible by the merger.

49 The Staff Agreement's proposed delay in the consideration of the AFORs thwarts the Legislature's goal to promote competition, which is one of the very policy goals of the AFOR statute.[71] Accordingly, the Joint Wireless Carriers recommend that the Commission reduce the intrastate access rates of the CenturyLink ILECs to the level of

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[68] Merged Firm Brief, p. 5.

[69] Merged Firm Brief, p. 6.

[70] Exh. JAA-7HCSRT, pp. 12-22.

[71] RCW 80.36.135(2)(c).

the Qwest intrastate rates initially and then over time the rates of the CenturyLink and Qwest ILECs to mirror Qwest's interstate access rates.[72]

2. **To what extent is it in the public interest to delay the earnings review required as a condition of the Commission's approval of the CenturyTel/Embarq merger in Docket UT-082119, as set forth in the Joint Applicant/Staff/Public Counsel Settlement Agreement in this proceeding? Should the Commission order an earnings review by a date earlier than that contained in the Staff/Public Counsel/Joint Applicant Settlement?**

50 The Commission ordered CenturyLink in Docket UT-082119 to file a report on the third anniversary after the closing date that includes normalized pro forma results that captures merger synergies and then ordered CenturyLink to file an AFOR in five years after the 2009 closing of the CenturyTel/Embarq merger.[73] Condition 3 of the Staff Agreement delays the three and five-year filings until three-to-four years after the CenturyLink/Qwest transaction closes. The Merged Firm justifies the delay by citing the merger with Qwest is a substantial change in circumstances and there will be a lot of "moving parts" due to the Embarq and Qwest acquisitions.[74] The point made abundantly clear in the hearing is that CenturyLink never rests in acquiring more companies.[75] If the Commission accepts the logic of the Merged Firm, given its track record, there never will be a good time to conduct the review contemplated in the CenturyTel/Embarq Merger Order as the Merged Firm will constantly be calculating new synergies and integrating new systems.

51 More importantly, the Commission should not let the "wait till next year" logic prevent the Commission from addressing the specific merger-related harms detailed in

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[72] TR. 415, l. 25 – TR. 416, l. 4. Citations to the transcript are denoted by Transcript page reference and line references. The above citation is a reference to Transcript page 415, line 25 to Transcript page 416, line 4.

[73] *In the Matter of the Joint Application of Embarq Corp. and CenturyTel, Inc. for transfer of control of United Tel. Co. of the Northwest d/b/a Embarq and Embarq Communications, Inc.*, Washington State Utilities and Transportation Commission, Docket UT-082199, Order 05, Final Order Approving and Adopting Settlement Agreement; Authorizing Transaction Subject to Conditions; Rescinding Order 03; Approving and Rejecting Side-Agreements; Granting and Denying Pending Requests for Leave to Withdraw; Dismissing Party (May 28, 2009) ("CenturyTel/Embarq Merger Order"), p. 15, ¶ 49.

[74] Merged Firm Initial Brief, p. 9.

[75] Tr. 328, ll. 19-23 (Jones) ("I think this is my seventh acquisition in 17 years with the company").

Mr. Appleby's testimony. The Merged Firm's owner's economics advantages that grow as a result of the merger can only be cured by the reduction of the CenturyLink ILECs rates to the level of the Qwest rates initially and then over time to the level of Qwest's interstate rates. The Commission should not delay in returning the synergy savings from the CenturyTel/Embarq merger and the CenturyLink/Qwest merger to Washington consumers until some far-off earnings review. Mr. Appleby demonstrated that the requested access reductions are far less than the Washington synergy savings generated by CenturyLink's last two mergers.[76] Staff witness Vasconi stated that intrastate access reductions "could potentially be part of synergy benefits"[77] and he could not think of any other ways that the Settlement could flow through benefits to wholesale customers given the delay in the AFOR reviews in Condition 3 of the Settlement.[78]

52 The Merged Firm also asserts that the condition in the Embarq/CenturyTel Merger Order and Conditions 5 and 6 in the Staff Agreement preventing Management and Merger Costs related to the transactions should give the Commission comfort.[79] Testimony at the hearing, however, demonstrated that Staff will not be able to confirm that rate increases in Qwest business 1 FR rates will not be used to offset increases in management costs or merger related costs.[80] The same is true for any increases in bundled services rates by the CenturyLink ILECs or Qwest.[81]

53 The Merged Firm also touts its broadband commitment of $80,000,000 as a way to ensure merger synergies are realized. Testimony at the hearing from Mr. Reynolds of Qwest in response to questions from Commissioner Oshie, however, made it clear that

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[76] JAA-1CT, p. 33, ll. 9-14. Mr. Appleby's confidential testimony calculates the amount of revenue reductions from first taking the CenturyLink ILEC rates to the Qwest rates and then taking all of the ILECs' rates to mirror the Qwest interstate rates and compares that amount to the estimated Washington specific merger synergies.

[77] Tr. 242, ll. 5-6.

[78] Tr. 243, ll. 5-11.

[79] Merged Firm Brief, p. 11, ¶ 25.

[80] Tr. 243, l. 12 – Tr. 244, l. 4. ("Q. Okay. So what provision here in this agreement mandates that any excess revenue that Qwest gets from increasing their business rates by $1 doesn't go to cover management costs or merger costs? A. (Vasconi) There are none.")

[81] Tr. 245, ll. 10-17 ("And because Qwest and CenturyLink have pricing flexibility on their bundled services they could increase those rates to their bundled customers; is that correct? A. (Vasconi) Yes, it is. Q. Okay. And they could use those increases in revenues to cover management costs and merger related costs; correct? A. (Vasconi) Or other costs that they have, yes.")

the promised investments are *not* incremental to existing capital budgets but instead are "part of it."[82] Unless intrastate access reductions are added as a condition to merger approval, the Commission can take no comfort that merger synergies will be returned to Washington consumers before the implementation of the Qwest and CenturyLink AFORs that, under the Settlement, will not even be filed until at least the Second Quarter of 2014. The public interest is harmed by such a delay without immediate action on access reductions.

3. To what extent is it in the public interest to retain separate regulated operating entities in Washington (i.e., the CenturyLink companies, Embarq, and Qwest) after closing of the merger? Should the Commission's order in this proceeding require that the companies be consolidated or otherwise treated as a single entity for Washington regulatory purposes?

54 The Brief of Staff and the Public Counsel acknowledges that there might be some advantages to be gained from the consolidation of the Washington legal entities involved in the merger, recognizing synergies from the consolidation of operations and systems and the regulatory burden on the Commission arising from regulating five ILECs owned by the same holding company.[83] Staff and Public Counsel also discuss the risks created by flash cut consolidation.[84] The Joint Wireless Carriers do not advocate a flash cut for the Merged Firm's ILECs operations to be consolidated. We do, however, advocate that many of the merger-related harms arising from differing intrastate access rates in the operating entities, multiple interconnection agreements with differing terms and conditions, prevention of the realization of network efficiencies, and claims of the rural exemption that hampers competition can be addressed by linking the Washington entities together for regulatory purposes.

55 The Merged Firm's Brief lists several reasons arguing against consolidation of the operating entities for regulatory purposes. The Joint Wireless Carriers already addressed in their Initial Brief the speculative nature and unreliability of the trigger of debt

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[82] Tr. 306, ll. 16-24.
[83] Staff/Public Counsel Brief, ¶ 20.
[84] Staff/Public Counsel Brief, ¶ 21.

covenants argument.[85] Perhaps, the most telling reason why the Merged Firm does not want the regulatory consolidation is its argument that its study areas would be consolidated which can have dramatic impact on the calculation of federal universal service funding to the Merged Firm's ILECs. The Merged Firm's witnesses ducked these questions at the hearing related to the impact on universal service funding[86] but now the Merged Firm raises the threatening specter of dramatic USF reductions without citing to any evidence in the record. If dramatic reductions in USF receipts are indeed the result of regulatory consolidation, then the Commission should be applauded for reducing the burden on the customers of all of the other carriers in the state who contribute to the federal USF to the tune of a surcharge of more than 15% on interstate services. The Joint Wireless Carriers suggest the Commission recognize the regulatory games and the harm to the public caused by the multiple regulatory entities and treat the Merged Firm's ILECs for regulatory purposes in the same way that it presents its results to its shareholders and the investment community.

56 If the Commission does not ultimately order consolidation for regulatory purposes, it can solve many of the same problems by adopting the additional conditions proposed by the Joint Wireless Carriers related to access charge reductions, interconnection agreement extensions (for 4 years, not 3) for the CenturyLink agreements in addition to the Qwest agreements, porting of interconnection agreements between entities and states, single POI where the ILEC networks are interconnected, and no rural exemption for any of CenturyLink ILECs.

4. If the Commission approves the transaction, together with the conditions included in the proposed Settlement Agreements, would the merged company (or its subsidiaries) operating in Washington be eligible for the rural exemption under 47 U.S.C. § 251?

57 The Merged Firm's Initial Brief states that the three CenturyTel companies are rural telephone companies and therefore subject to the rural exemption in 47 U.S.C. § 251(f)(1). The Embarq company has waived the rural exemption and Qwest is not

[85] Joint Wireless Carriers' Initial Brief, p. 9, ¶ 15.
[86] Tr. 481, l. 15 – Tr. 482, l. 9. (Bailey Cross).

eligible for it.[87] They also assert, and we agree, that none of the Merged firm ILECs can petition for the Section 251(f)(2) exemption due to the number of access lines of CenturyLink before and after the merger.[88]

58 With respect to Section 251(f)(1), the Merged Firm asserts that even though they hold the rural exemption, competition is not precluded because the CenturyTel ILECs have negotiated interconnection agreements, exchanged traffic with, and ported numbers to CLECs.[89] That argument completely misses the point. The 251(f)(1) exemption applies *only* to subsection 251(c) duties. Interconnection for the exchange of traffic directly or indirectly is a duty of all telecommunications carriers under section 251(a) and *still applies to the CenturyTel companies even if they hold the section 251(f)(1) exemption.* Moreover, reciprocal compensation and number porting are part of the obligations of all local exchange carriers in section 251(b) and *still apply to all local exchange carriers, even if they hold the section 251(f)(1) exemption.*

59 Unless the Commission utilizes its public interest powers in reviewing this transaction, rural exempted ILECs like the CenturyTel ILECs have no legal compulsion to enter into interconnection agreements with wireless carriers and CLECs for section 251(c) duties to provide interconnection at cost-based rates, unbundled network elements and resale. If the CenturyTel ILECs voluntarily enter into agreements, they do so with the leverage created by the rural exemption and can dictate terms and conditions to the CLECs and wireless carriers that they would not be able to accomplish if not cloaked in the rural exemption.

60 For example, interconnection at cost-based rates is very important to the Joint Wireless Carriers as it allows us to interconnect our networks with the ILECs at the lower UNE prices rather than at special access prices. Maintenance of the rural exemption by the CenturyTel ILECs allows them to charge the Joint Wireless Carriers special access prices for interconnection and raises the cost of intermodal competition. Surely, Congress did not envision ILECs that are part of a corporate organization like the Merged Firm being exempted from providing cost-based interconnection. The bottom line is that

[87] Merged Firm Brief, p. 19.
[88] Merged Firm Brief, p. 20.
[89] Merged Firm Brief, p. 20.

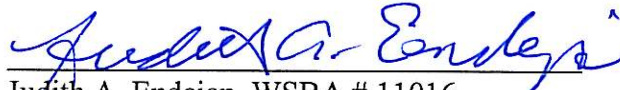
it is inappropriate for the Commission to sanction the blocking of competition for ILECs that are part of a corporate organization containing 17 million access lines and billions of dollars of revenues and profits. Competition and the public interest are harmed if the CenturyTel ILECs are allowed to maintain their rural exemption.

X. CONCLUSION

61 For all the foregoing reasons, Joint Wireless Carriers request that the Commission impose the additional conditions detailed herein in approving the proposed merger of Joint Petitioners Qwest and CenturyLink or the "no harm" standard will not be met.

RESPECTFULLY SUBMITTED this 21st day of January, 2011.

GRAHAM & DUNN PC



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