

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Joint Application of)
Qwest Communications International, Inc.) DOCKET NO. 10-049-16
and CenturyTel, Inc. for Approval of Indirect)
Transfer of Control of Qwest Corporation,)
Qwest Communications Company, LLC and) REPORT AND ORDER
Qwest LD Corporation)

ISSUED: January 4, 2011

SYNOPSIS

Qwest Communications International, Inc. and CenturyTel, Inc. (Joint Applicants) applied for Commission approval of a merger. Based on the record before the Commission, including the settlements submitted, the Commission finds the merger is in the public interest, subject to the provisions in the settlements. The Commission declines to impose additional conditions.

By The Commission:

BACKGROUND

On May 19, 2010, the Joint Applicants filed the Joint Application of Qwest Communications International, Inc. and CenturyTel, Inc. for Approval of Indirect Transfer of Control (Merger) of Qwest Corporation, Qwest Communications Company, LLC and Qwest LD Corporation (Operating Entities) to CenturyLink. *See Joint Application for Expedited Approval of Indirect Transfer of Control, p.1.* The Joint Applicants filed similar applications in other states.

The Commission held a technical conference to develop a list of issues to be considered in the Docket. On May 27, 2010 the Joint Applicants filed testimony in support of

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their petition. The following entities intervened in this Docket: tw telecom of utah llc [sic]; McLeodUSA Telecommunications Services, Inc., d/b/a PAETEC Business Services (McLeodUSA); DIECA Communications, Inc. d/b/a Covad Communications Company; XO Communications Services, Inc.; Level 3 Communications, LLC (Level 3); and (filing jointly) Integra Telecom of Utah, Inc. (Integra), Electric Lightwave, LLC, Eschelon Telecom of Utah, Inc (Eschelon); Utah Rural Telecom Association (URTA), on behalf of itself and the following URTA members: All West Communications, Bear Lake Communications, Beehive Telephone Company, Carbon/Emery Telcom, Central Utah Telephone, Direct Communications Cedar Valley, Emery Telcom, Gunnison Telephone, Hanksville Telcom, Manti Telephone, Skyline Telecom, South Central Utah Telephone Association, Strata Networks, and Union Telephone; 360networks, Inc; Department of Defense and All Other Federal Executive Agencies (DoD); Salt Lake Community Action Program (SLCAP). On June 17, 2010, the Commission issued a scheduling order and Notice of Hearing establishing a deadline for intervention, testimony filing dates, and setting October 26 and 27, 2010 as hearing dates for this matter.

On August 30, 2010, the following parties filed direct testimony in the case: the Division of Public Utilities (Division), Level 3, the Office of Consumer Services (OCS), Integra, 360networks, SLCAP, DoD, and (filing jointly) tw telecom of Utah, McLeodUSA, Integra, Electric Lightwave, Eschelon, and Level 3 (Joint CLECs). On September 30, 2010, the Division, Joint Applicants, and URTA, filed rebuttal testimony. On September 30, 2010, 360networks gave notice that it was withdrawing as an intervenor in the Docket as it had reached a settlement with the Joint Applicants. On October 14, 2010, Level 3, the DoD, Integra, and the Joint CLECs

filed surrebuttal testimony. On October 28, 2010, the Joint CLECs filed supplemental testimony. On November 2, 2010, the joint Applicants filed supplemental testimony. On November 2, 2010, the Division filed supplemental rebuttal testimony.

The Commission held hearings on the Joint Application on October 26-27, 2010. Previous to those hearing dates, the Joint Applicants entered into settlements with the following parties: the Division; the OCS; SLCAP; and the DoD. The Commission also held a supplemental hearing on November 4, 2010. Subsequent to that hearing, the Joint Applicants reached a settlement with Integra. Based on those settlements, the settling parties agreed that the merger was in the public interest. There were two CLECs (McLeodUSA and Level 3) who did not reach separate settlements with the Joint Applicants and moved the Commission to approve the settlements and merger only with additional conditions recommended by them.

Based on the evidence submitted to the Commission, and based on the proposed settlements—especially the Division and Integra settlements, the Commission finds the merger is in the public interest. The Commission declines to impose any of the conditions recommended by McLeodUSA and Level 3 for reasons explained below. While McLeodUSA and Level 3 understandably defend their interests, they minimize many of the concessions made by the Joint Applicants, and also the significant benefits gained by the individual settlements for various stakeholders. The Commission's duty is to protect all the public interest, and "the ultimate criterion against which all relevant factors are to be evaluated is the 'public good and convenience' not the existing carriers' convenience and necessity." *Milne Truck Lines, Inc. v. Public Serv. Comm'n*, 720 P.2d 1373 (Utah 1986); see also *Collett v. Public Serv. Comm'n*, 211

P.2d 185 (Utah 1949) (holding that the “primary interest involved in these cases is that of the public []. The ‘convenience and “necessity” involved in the determination of an application is the public convenience and necessity, not that of individuals.’”) The Commission finds the settlement agreements strike an appropriate balance between the interests of the Joint Applicants, the interests of their wholesale customers (CLECs), and the interests of retail customers in Utah. Therefore, no other conditions other than those contained in the individual settlements will be imposed.

The Merger is the Public Interest

There exist Legislative policy declarations that govern our State’s telecommunications law. *See Utah Code Ann. §54-8b-1.1*. Those key legislative pronouncements “declare it is the policy of the state to:

- (1) endeavor to achieve the universal service objectives of the state as set forth in *Section 54-8b-11*¹;
- (2) facilitate access to high quality, affordable public telecommunications services to all residents and businesses in the state;
- (3) encourage the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state;
- (4) allow flexible and reduced regulation for telecommunications corporations and public telecommunications services as competition develops;
- (5) facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure, including networks with nondiscriminatory prices, terms, and conditions of interconnection;
- (6) encourage competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis;

¹ In administering this title, the commission shall endeavor to make available high-quality, universal telecommunications services at just and reasonable rates for all classes of customers throughout this state.

- (7) seek to prevent prices for tariffed public telecommunications services or price-regulated services from subsidizing the competitive activities of regulated telecommunications corporations;
- (8) encourage new technologies and modify regulatory policy to allow greater competition in the telecommunications industry;
- (9) enhance the general welfare and encourage the growth of the economy of the state through increased competition in the telecommunications industry; and
- (10) endeavor to protect customers who do not have competitive choice.

See id. To further these goals, the Legislature grants the Commission authority to regulate telecommunications corporations in the state—to the extent not inconsistent with federal law, including approving mergers and acquisitions. Before approving the merger, however, the Commission must find that it is “in the public interest”, pursuant to Utah Code Ann. §§ 54-4-28², -29³, -30⁴. Given the Legislative policy declarations governing telecommunications law in the State, the settlements⁵ presented to the Commission, and given the record before it, the Commission finds the merger is in the public interest.

² No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission, which shall be granted only after investigation and hearing and finding that such proposed merger, consolidation or combination is in the public interest.

³ Hereafter no public utility shall purchase or acquire any of the voting securities or the secured obligations of any other public utility engaged in the same general line of business without the consent and approval of the Public Service Commission, which shall be granted only after investigation and hearing and finding that such purchase and acquisition of such securities, or obligations, will be in the public interest.

⁴ Hereafter no public utility shall acquire by lease, purchase or otherwise the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease or acquisition of said plants, equipment, facilities and properties will be in the public interest.

⁵ Utah Code Ann. §54-7-1 states “informal resolution, by agreement of the parties, of matters before the commission is encouraged”

The Merger is in the Public Interest

The merger is in the public interest for a variety of reasons. The merger will “facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure” *Utah Code Ann. §54-8b-1.1(5)*. The Joint Applicants provided evidence that the merger will also “facilitate access to high quality, affordable public telecommunications services” and “encourage the development of competition as a means of providing wider customer choices” in Utah. *Utah Code Ann. §54-8b-1.1(2),-(3)*. The Joint Applicants detailed the trends nationally and in Utah, tending towards wireline losses, increased wireless and cable competition, and increased demand for broadband capacity and higher broadband bandwidth content. The merger will create a telecommunication provider with “enhanced ability to invest in local and national networks, deploy broadband and other advanced services, and provide outstanding service quality to its customers” while increasing its ability to compete more efficiently nationwide, including in Utah. *Direct Testimony of Jerry Fenn, pp.4-5; see also Direct Testimony of Jeffrey Glover, pp. 6, 10, 16-20*. Because of the Joint Applicants’ combined financial strength, the merger “will create a carrier with major scope and scale and the financial resources and flexibility to provide high-quality communications services to customers and communities in Utah and across the country.” *Direct Testimony of Jeffrey Glover, pp.15-18*. Because of certain synergies expected because of the merger, the Joint Applicants state “the merged company is expected to realize \$1.7 billion in remaining cash flow that could be used for additional investment, debt repayment, or other appropriate uses.” *Id. at p.11*.

Additionally, the evidence establishes that the Joint Applicants technical and managerial resources will continue to benefit Utah customers. In addition to the experienced staff CenturyLink will add to the merged company, the Joint Applicants assert that the merged company will retain the majority of Qwest's employees to "carry out the local market focus that is in the hallmark of CenturyLink's service provisioning model." *Rebuttal Testimony of Jeremy Ferkin, pp. 10-12.* Joint Applicants provided evidence of managerial and operational practices, including CenturyLink's "regional operating model and local 'go-to-market' strategies", that have brought technical, operational and managerial resources to the urban and rural markets it enters. The Joint Applicants' technical and managerial resources will allow the merged company to continue to bring reliable services and competition to Utah.

Concerns about the Merger

McLeodUSA suggested the merger would "pose a substantial risk of harm to wholesale customers and local competition in Utah." *McLeodUSA Post-hearing Brief, p.3.* There is clearly very real uncertainty about this merger, as with any merger. *See generally, McLeodUSA Post-hearing Brief, p.3, ¶ 2.* An important factor in ensuring a greater likelihood of success is the certainty the Joint Applicants can provide the Commission and its customers, both retail and wholesale, as it completes the merger in the coming years. The Division's witness, Casey Coleman, summarized many of the CLECs' concerns when he stated that "as he reviewed the testimony filed by each party . . . one common theme has surfaced: Keeping things status quo." *Tr.p.499, ll.10-14.* Of the CLECs remaining in these proceedings, only Integra and 360networks reached a settlement with the Joint Applicants. Given the uncertainties inherent in

this merger and given some of the challenges with the CenturyLink/Embarq merger, McLeodUSA and Level 3 desire to obtain as much certainty going forward, and request the Commission impose additional conditions on the merger. McLeodUSA and Level 3 contend that without the additional conditions in place on the merger approval, they face of risk of OSS degradation and harm to their ability to compete. Level 3 and McLeodUSA filed post-hearing briefs recommending the Commission impose additional or further conditions on the Joint Applicants before approving the settlements and merger. Level 3 contends its recommendations will “reduce billing disputes, minimize discriminatory treatment . . . , and [generally] reduce litigation.” *Level 3 Post-hearing Brief*, p.2. Generally, McLeodUSA claims the proposed merger poses a substantial risk of harm to wholesale customers and local competition in Utah, and requests the Commission require additional conditions to prevent deterioration of “CLEC access to and functionality of, Qwest’s operations support system (OSS).” *McLeodUSA Post-hearing Brief*, p.16.

Level 3 proposes the following conditions:

- Prohibit the Combined Entity from using billing disputes with one entity from threatening disconnection, disconnecting or refusing to provision new orders by any of entities of the Combined Entity;
- Prohibit the Combined Entity from engaging in rural CLEC arbitrage;
- Require the Combined Entity to allow carriers to use new or expanded interconnection routes established by affiliates of the Combined Entity that are in adjoining service territories, and require notice of these network modifications by the Combined Entity. In addition, all contracts between the affiliates of the Combined Entity for telecommunications services and network interconnection must be made publicly available;
- Prohibit the Combined Entities from continuing or expanding the improper homing of 8YY switched access charge and transport practices;

- Require Qwest to cease its unlawful and arbitrary practice of denying dispute claims solely on the basis that they are more than 90 days beyond the date originally billed;
- Require the Combined Entity to compensate terminating carriers at the appropriate rate for ISP-bound traffic and direct that ISP-bound traffic shall include traffic provisioned using virtual NXX codes, and insure that all locally dialed ISP-bound traffic in the calculation of relative use factors pursuant to 47 C.F.R. §703(b).

Level 3 Post-hearing brief, pp. 3-7.

McLeodUSA proposes three additional conditions before approving the merger:

- a commitment to maintain Qwest's existing OSS for at least three years to match the Joint Petitioners' 3-5 year synergy period;
- a commitment to meet specific operational thresholds for any successor OSS to ensure that there are no disputes over the standard in the Integra Settlement precluding functionality "materially less" than the Qwest OSS; and
- a commitment to meet specific benchmarks to ensure that specific components of wholesale OSS service quality, including support, data, billing, functionality, performance, electronic flow through and electronic bonding, are not degraded.

Post-hearing Brief of McLeodUSA, p.24.

The Commission declines to impose McLeodUSA's and Level 3's requested conditions. The settlements submitted to the Commission give sufficient certainty to the CLECs during the merger, but also allow the Joint Applicants to adjust to the ever-changing competitive landscape in the telecommunication industry.

The Commission declines to impose Level 3's conditions as they deal with underlying issues related to billing disputes, so-called traffic pumping or arbitrage, potential access to interconnection routes, certain traffic routing practices, compensation for transportation, etc. These issues are either currently pending or may arise in various jurisdictions where the Joint Applicants and Level 3 interact. However, they are not properly addressed in

these proceedings as they have little or no direct bearing on whether the public interest is served by the proposed merger. Those are issues that are outside of the scope of these merger proceedings. Not only are they outside the scope of these proceedings, but the Commission lacks an evidentiary basis (even assuming it has jurisdiction to address each of the specific disputes) to address these matters. Level 3 and other CLECs have adequate remedies for any such issues by raising them in individual arbitration or complaint proceedings before an appropriate adjudicative body. Therefore, the Commission will not impose these conditions on the Joint Applicants.

The Commission declines to impose McLeodUSA's conditions either. McLeodUSA argued that its proposed conditions are needed to ensure it and other CLECs' ability to compete would not be harmed by the merger of the Joint Applicants' respective OSS. It contends its proposed conditions will protect it from what it terms OSS degradation, especially during the three to five year period when the Joint Applicants expect to realize their synergy savings – and even after that time period. Requiring the Joint Applicants to use Qwest OSS for three instead of two years, however, will not ensure that the OSS degradation – if it does occur, will be less likely to happen after three years than after two. In contrast, however, the proposed settlements strike an appropriate balance between the CLECs' desire to maintain high-quality OSS and the Joint Applicants' interest in fully realizing synergy savings, while still maintaining a framework to preserve healthy competition in Utah.

Several aspects of the settlements provide certainty to the CLECs as the merger is fully consummated. First, the provisions of the settlements “facilitate and promote the efficient

development and deployment of . . . networks with nondiscriminatory prices, terms, and conditions of interconnection.” *Utah Code Ann. §54-8b-1.1(5)*. Specifically, the settlements provide the CLECs certainty regarding the Joint Applicants’ implementation of any new OSS, costs during the merger of the OSS, and the service quality of any new OSS – allowing them to adequately prepare for the merger. Various provisions of the settlements reached by the Division, *Division Settlement*, p.3, and Integra, *Integra Settlement*, p.9, provide that which the non-settling CLECs desire to maintain longest – access to the Qwest OSS, for a reasonable amount of time. For example, the Integra Settlement (to which any CLEC may opt-in) states the Joint Applicants will, from the date of the merger closing, “use and offer to wholesale customers the legacy Qwest [OSS] for at least two years, or until July 1, 2013, whichever is later...” *Integra Settlement*, ¶B.12; *see also Division Settlement*, ¶ 1 (stating that Qwest will not discontinue its OSS for a minimum of 24 months). Additionally, before any change in the Qwest OSS is implemented, the Integra Settlement provides the Joint Applicants will provide “a detailed transition plan” to the Commission and the parties to the Integra Settlement “at least 270 days before replacing or integrating Qwest OSS system(s).” *Integra Settlement*, ¶B.12.a. In the Division settlement, the Joint Applicants agree to provide no less than six months notice of the retirement of the legacy Qwest OSS from current Qwest territories. *Division Settlement*, ¶1. The Division Settlement further provides that “any interconnected CLEC...shall be permitted to test the proposed replacement OSS, and the Company shall cooperate with such testing, at no charge to the testing carrier, including, but not limited to, making available a testing environment.” *Division Settlement*, ¶1; *see also Integra Settlement*, ¶B.12.c.ii. The Division and Integra

Settlements, as much as reasonably possible, “prevent[] the prices for tariffed public telecommunications services . . . from subsidizing the competitive activities of” the Joint Applicants, especially during the period while the Joint Applicants attempt to realize their synergy savings. *See Utah Code Ann. §54-8b-1.1(7)*. For example, the protections include preventing the Joint Applicants from recovering one-time transaction costs in wholesale rates, *Integra Settlement ¶B.1*, from seeking approval for new interconnection or tariff rates, from establishing new wholesale charges for service order processing or fees associated with Access Service Requests and Local Service Requests, directory listing storage, local portability charges, etc. for 36 months from the merger closing. *Division Settlement, ¶III.B.3*. These commitments encourage the Joint Applicants to realize synergy savings as detailed in their application and testimony, and not through using retail and wholesale rates and fees to entirely subsidize the projected synergy savings.

There are other benefits to the merger, which will provide the CLECs with certainty as it proceeds. The settlements commit the Joint Applicants to keep in place wholesale service standards and reports, *id. at ¶B.2*, require the Joint Applicants provide specific OSS information to the CLECs, *id. at ¶B.10*, commit the Joint Applicants to maintain sufficient staff and support for wholesale and CLEC operations, *id. at ¶B.11*, commit the Joint Applicants to provide the wholesale performance metrics that were provided in the legacy Qwest territory to CLECs, *id. at ¶B.2.*, and commit the Joint Applicants to make the terms of the Integra Settlement available to any requesting carrier, *id. at ¶B.15*. If a change in the OSS occurs, the Division and Integra Settlements allow CLECs to receive adequate and detailed notice of any change in the

OSS, plan for the implementation of the new OSS, ensure the reliability of the new OSS, and shift some of the costs of the change in OSS to the Joint Applicants instead of solely on the CLECs. These provisions provide the protection needed to protect the public interest in maintaining the framework for healthy competition in telecommunications, but also provides adequate protection for the CLECs.

Second, the Division and Integra Settlements provide certainty in committing the Joint Applicants to maintaining the Utah Performance Assurance Plan (UPAP) for at least 36 months from the time of the merger closing. *Division Settlement*, ¶4. In fact, the parties recognize that the UPAP does not automatically end after 36 months, but only that the Joint Applicants may move to modify or discontinue the UPAP after that time. *Id.*¹ This is especially important given the evidence regarding the CenturyLink and Embarq post-merger integration problems, for example, the issues faced in North Carolina with systems integration. That transaction “resulted in a series of operational, service-affecting, problems . . . insufficient training or resources provided to former Embarq employees about the new system . . . differences between the old and new systems and a lack of familiarity with the new systems.” *McLeodUSA Post-hearing Brief*, pp. 8-9. CenturyLink witness Michael Hunsucker presented testimony that contended CenturyLink “took the necessary steps to address these issues [in this merger], minimize any impacts to customers and to ensure they are resolved prior to any future conversion.” *Joint Applicants’ Post-hearing Brief*, pp. 10-11; *see also Hunsucker Supplemental Testimony*, pp. 7-8. Therefore, while not all issues during the merger of the OSS may be avoided, the Joint Applicants argue that because of the experience in North Carolina, the Joint

Applicants have developed a mechanism that will make future mergers less prone to problems. Notably, the Division and Integra Settlements commit the Joint Applicants to “meet or exceed the average wholesale performance provided by Qwest to CLEC” as measured by specific measurements, *Integra Settlement*, ¶B.2.a.i., and provides methods and remedies for resolution in case the Joint Applicants do not meet those standards. *Id. at B.2.b.* The provisions in the Division and Integra Settlements, together keeping the UPAP in place for at least 36 months, and requiring the Joint Applicants to request Commission permission before making changes to the UPAP, will allow the Commission to thoroughly review the service quality provided by the Joint Applicants as they merge.

The terms of the settlements, this provision, and others like it, ensures that the Commission and the CLECs have a reasonable level of certainty regarding service quality. Such provisions recognize the importance the Commission gave the PAP when Qwest (fka US West) sought approval of compliance with 47 USC §271(d)(3)(C). *See “Order on Performance Assurance Plan”, In the Matter of the Application of Qwest Corporation (fka US West Communications, Inc.) for Approval of Compliance with 47 USC §271(d)(3)(C), June 18, 2002.*

The Commission there stated that the PAP’s purpose “is to provide sufficient economic incentives and constraints such that Qwest will continue to fulfill its obligations (federal and state) to its competitors (CLECs) after receiving in-region interLATA authority.” *Id.* at p. 1.

The Commission noted that its

acceptance of the Utah PAP’s adequacy can only be based on a finding that it is sufficient to protect the public interest. Part of that adequacy is the ability of the Commission to change the Utah PAP over time, as needed. Without such authority the Commission cannot find that the proposed Utah PAP is in the public

interest. Therefore, the Commission directs that Qwest incorporate the Staff's proposed language regarding change authority.

See id. at p.6. Because the UPAP relies in large part on the structure of the OSS in place, and given the Commission's Order asserting final Commission authority over any changes to the UPAP, whenever the new OSS may be implemented, the UPAP would still require the parties obtain Commission approval for changes in the UPAP.

Third, the settlement provisions provide certainty regarding the interconnection agreements and commercial agreements the CLECs currently have with Qwest. As noted by the Joint Applicants, they have committed to extend the term of all interconnection agreements by thirty-six months after the closing date of the merger. *Integra Settlement*, ¶B.3.a., *see also Division Settlement*, ¶III.B.2.a.1-3. The Joint Applicants have also agreed to extending the terms of all Qwest wholesale and commercial agreements by eighteen months, *Id.* at ¶B.3.b,c, after the merger closing. These are benefits to the CLECs that likely would not have occurred but for the merger, and extensions that the Commission itself could not have required. These concessions do provide significant certainty to the CLECs regarding their ability to compete pending the finalization of the merger.

Further, there are other provisions of the settlements that benefit the CLECs, allowing them some relief from uncertainty while the merger is finalized. For example:

- The Joint Applicants agree that Qwest shall continue to be classified as a Bell Operating Company (BOC) after the merger closing, *Division Settlement*, ¶III.B.7, *Integra Settlement*, ¶B.7

- The Joint Applicants have committed to keep the wholesale tariffs in place for at least twelve months from the close of the merger. *Integra Settlement*, ¶B.3.d;
- The Joint Applicants agree to maintain the Qwest change management process (CMP) for at least 36 months from the merger closing, *Id. at ¶III.B.5*;
- The Joint Applicants agree that they will not seek a waiver of the requirements in R746-340-8,-9 for at least two years following the merger closing.

The settlement provisions reflected above keep the current environment for competition in place for a reasonable period of time, allowing the CLECs to maintain their competitiveness, while allowing the Joint Applicants to complete their merger and realize its benefits. This serves the public interest by maintaining a “vibrant telecommunications market . . . as CLECs, Qwest and other companies are financially healthy and able to adapt to the changing dynamic marketplace.” *See Testimony of Casey Coleman, Tr., p.50, ll.12-14.*

Additional Benefits

One of the benefits of the merger is the investment in broadband infrastructure the Joint Applicants will make in Utah. Allowing the merger, and subsequent investment, allows the state to “achieve the universal service objectives of the state”, *Utah Code Ann. §54-8b-1.1(1)*, which includes “endeavor[ing] to make available high-quality, universal telecommunications services at just and reasonable rates for all classes of customers throughout this state.” *Utah Code Ann. §54-8b-11.* The Commission does not regulate broadband and does not have any jurisdiction to require the investment committed to by the Joint Applicants. Pursuant to the Joint Applicants settlement with the Division, however, the Joint Applicants “commit to invest \$25

million in broadband infrastructure to benefit retail customers in Utah over a five-year period beginning on January 1, 2011” *Division Settlement*, ¶ III.A. In particular, the Joint Applicants commit to investing at least fifteen percent of that \$25 million in areas that are “unserved or underserved” areas. *Id.* This investment is significant given the increased customer demand for higher broadband capacity and higher bandwidth content, and given the state and national trend moving towards wireless lines and away from wirelines. *See Jerry Fenn Direct Testimony*, pp. 18-19, 22-23. The Commission notes some of the CLECs contention that some or all of this investment would have occurred in any case, *Tr. pp. 504-505*, and that the \$25 million is a minor amount compared to commitments made in other states, *see Timothy Gates Supplemental Testimony*, pp.23-32. While such an investment may not seem significant to some CLECs, the committed investment represents a significant commitment to directly improve or expand the broadband infrastructure *throughout* Utah. Such an investment will have the effect of promoting increased broadband availability and competition in all areas of the state, including in “unserved and underserved” areas. Division witness Casey Coleman testified that Utah retail customers may not have realized the benefits of such investment “absent a settlement.” *Tr.p.500, ll.22-23*. Given the Commission’s lack of jurisdiction over broadband, and given the Joint Applicants commitment to invest in broadband, the Commission finds this result of the merger will be in the public interest.

Another additional benefit of the merger, pursuant to the terms of the settlement, is the certainty it provides to Utah retail customers. In the OCS and SLCAP settlement agreements, the Joint Applicants commit not to seek waivers from the requirements of R746-

340-8,-9 (related to service standards and reporting requirements) for a minimum of two years. *See e.g. OCS Settlement, ¶III.A.* They also agreed not to increase residential measured service rates during 2011, and if the Joint Applicants did increase those rates, they would provide an off-setting credit until the end of 2011 to Lifeline customers. *See id at III.B.2.* The Joint Applicants also committed to maintaining current pricing for three years on certain retail business lines for the DoD, provided it maintains certain volume levels. If during those three years the rates under the settlement were higher than prices in applicable tariffs, the Joint Applicants agreed to reduce the prices to the lower tariff, catalog, or price list rate. *DoD Settlement, Attachment 1.* No party opposed the OCS, SLCAP, or DoD settlements and no party disputed that they were in the public interest. Given the Legislative policy declarations governing telecommunications law in the State, the settlements presented to the Commission, and given the record before it, the Commission finds the merger is in the public interest.

ORDER

1. Pursuant to Utah Code Ann. §§ 54-4-28,-29, and -30, the Commission approves the indirect transfer of control of Qwest Communications International, Inc. operating subsidiaries to CenturyLink;
2. The Commission approves the Division, OCS, SLCAP, DoD, Integra, and 360networks settlements. The terms of those individual settlements are incorporated into this Order as if set forth here. Specifically, the benefits of the Integra Settlement shall inure to the benefit of any CLECs opting into the terms of that Settlement, together with any concomitant obligations;

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3. Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 4th day of January, 2011.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary
G#70341